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FISCAL IMPACT REPORT

ORIGINAL DATE 02/08/13

SPONSOR Woods LAST UPDATED _____ HB _____

SHORT TITLE Transfer of Public Lands Act SB 404

ANALYST Weber

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$250.0	\$250.0	\$500.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicate to HB 292

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)

SUMMARY

Synopsis of Bill

Senate Bill 404 (SB 404) 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 EMNRD 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 EMNRD or the Director's Designee; (6) the Secretary of the GSD or the Secretary's Designee; (7) the STO or the STO's Designee; (8) the Secretary of the DOT or the Secretary's Designee; (9) the Secretary of the DCA or the Secretary's Designee; (10) the Secretary of the DFA or the Secretary's Designee; (11) the Secretary of the IAD 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 NMAC 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.

The State Land Office (SLO) offers the following which is similar to ENMRD:

The Bureau of Land Management's (BLM) base program budget for New Mexico is \$127,453,000, and the agency has about 750 Full Time Employees (FTEs). The U.S. Forest Service's base budget for New Mexico is \$91,008,000 and the agency has 1,087 FTEs. Other federal funds are allocated for federal land management, but at a minimum, if the state were to take control of these lands the State could need almost 2,000 more employees and an additional \$218 million dollars to administer the land at the same level as the federal government. There is no provision made for covering the costs associated with maintaining the public lands transferred to the State. The extent to which the SLO will administer the public lands received is not clear and so the impact to the SLO is undetermined. Land Maintenance Fund revenue cannot be used to support the taskforce activities under this act since they are not generating revenue for state trust land beneficiaries.

In the short term, arranging the transfer of title from the federal government to the State would involve significant additional FTEs and other funds beyond what the federal government currently spends to manage the land. The bill contains no appropriation to provide support to the taskforce entities.

If the federal government transfers title to the subject public lands to the State, the federal government presumably would stop or reduce payments under the current payments-in-lieu-of-taxes (PILT) program, which payments make up for the fact that federal lands are not subject to property taxes. In the most recently completed fiscal year, the federal government made \$34.8 million in PILT payments to New Mexico counties. Given the bill requires transfer of lands December 2015 the negative revenue impact is likely in FY 2016 and beyond.

FISCAL IMPLICATIONS

Based on agency comments it seems reasonable to assume approximate cost of \$250 thousand annually for task force related expenses.

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. This total plus more would come out of the New Mexico economy.

Simultaneously, similar costs related to managing the lands would become a liability for the state without a picture of how the lands would generate revenues to offset the expenses.

The EMNRD notes that as public lands is defined, land transfer will apply to all non-wilderness and non-municipal lands managed by the United States Department of Agriculture (USDA) Forest Service, United States Department of the Interior (USDI) Bureau of Land Management, USDI Fish and Wildlife Service, USDI Bureau of Reclamation, United States Army Corps of Engineers, and other agencies that administer and manage federally owned lands in New Mexico not exempted in Section 2 of SB 404.

Therefore, it follows that all federal monies associated with these entities will end upon transfer to the state on or before December 31, 2015.

The EMNRD continues:

The Forestry Division estimates that, if the lands required to be transferred were maintained by the state and not sold, full compliance with SB 404 will require hiring additional staff to assume the responsibilities and perform the duties currently performed by approximately 1,300 federal employees of the Forest Service and BLM in New Mexico. The State will also be required to assume the responsibilities and duties currently performed by an unknown number of employees of other federal agencies, such as the Bureau of Reclamation, United States Army Corps of Engineers, and Fish and Wildlife Service that are administering and managing federally owned property in New Mexico not exempted in Section 2.A.1-9 of SB 404 there will be an additional significant cost for facilities, vehicles, equipment, and supplies for the additional state employees required to

perform the assumed responsibilities and duties. Currently these costs are paid by the federal government.

Total cost to the State of New Mexico is estimated to be more than \$180 million per year, based on FY 2012 budgets of \$79,362,200 for the Forest Service and \$100,294,456 for the BLM. Those costs do not account for budgets of other applicable federal agencies. Those costs also do not include expenses related to wildland fire suppression, which are highly variable. Based on FY 2012, wildland fire suppression costs on federal lands could add another \$81 million to the budget.

There will also be significant costs in providing staff to the task force and holding meetings of the task force and to take testimony from affected groups. 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 incurred. This is the only cost item reflected in the budget impact above. There may also be costs for the SLO and the Legislative Council for administering the task force.

The SLO chimes in and echoes the EMNRD's comments:

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SIGNIFICANT ISSUES

The Administrative Office of the Courts (AOC) notes that earlier this year, both the Utah and Arizona legislatures passed bills similar to SB 404, 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. Should SB 404 be enacted into law, it can be anticipated that the legislation would face arguments regarding its constitutionality, with reliance placed upon Article IV, Section 3 of the Constitution of the United States, known as the “Property Clause,” and with some arguing that the demand exceeds the powers of the states vis-a-vis the federal government, as expressed in the Supremacy Clause, Article VI, Clause 2. Additionally, Article XXI, Section 2 of the New Mexico Constitution provides that the people of New Mexico “forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof...” It is notable that while some legal experts feel that the demand and the legislation supporting it may be constitutional, the thought is also expressed that the efforts and lawsuits spawned would cost a state millions of dollars and would be futile.

The SLO and the EMNRD offer similar concerns regarding legal issues with the federal government.

ADMINISTRATIVE IMPLICATIONS

The EMNRD notes that if the lands are maintained, instead of sold, implementation of SB 404 will require the state to hire hundreds if not thousands of additional staff. SB 404 also provides for eventual creation of a new state body, the Public Lands Commission, through future legislation, which would require staff and operating budget

TECHNICAL ISSUES

The EMNRD adds that SB 404 defines public lands as all lands except those specifically exempted instead of specifically listing lands that are public lands. SB 404 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.

POSSIBLE QUESTIONS

How will New Mexico’s assumption of ownership of the lands generate revenue consistent with the current federal expenditure to manage the lands?

MW/svb