LFC Requester:	None

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
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SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: *Feb 13, 2025* *Check all that apply:*
Bill Number: *HB 295* Original *X* Correction __
Amendment __ Substitute __

Sponsor: Rep. Nathan P. Small
Short Title: AN ACT RELATING TO TAXATION

Agency Name and Code Number: State Land Office - 539
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	**FY26**		
None	None		

(Parenthesis ( ) indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	**FY26**	**FY27**		
None - NMSLO	None - NMSLO	None - NMSLO		

(Parenthesis ( ) indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	No fiscal impact	No fiscal impact	No fiscal impact			

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: Amends Section 7-36-4 (Fractional Property Interests – Definitions – Taxation and Valuation of Fractional Property Interests) to exempt fractional interests (i.e., leaseholds) in state-owned improvements leased to an entity that is not exempt from tax, when those improvements are electric transmission facilities owned by RETA.

FISCAL IMPLICATIONS

While the bill does not have a direct fiscal impact on the New Mexico State Land Office (NMSLO), the lack of clarity regarding the application of the fractional interest statute creates business uncertainty that may negatively impact earnings from state trust lands. This uncertainty has been driven recently by some County Assessors taking a more aggressive approach in their interpretation and application of NMSA 1978 Section 7-36-4 (B) (1).

State trust lands were granted to the state from the federal government for the purpose of generating revenue for public institutions, primarily educational for purposes. This framework relies on the leasing of state land, including state-owned improvements to those lands in certain circumstances, to various public and private entities. The NMSLO does not believe it is constitutionally permissible to tax state-owned property (including state-owned improvements) under Article VII, Section 3 of the State Constitution, because the earnings from leases of state trust lands directly benefit the public. Money earned by the NMSLO is money that taxpayers do not need to come up with to support public schools, universities and hospitals throughout the state. See, e.g., *El Castillo Ret. Residences v. Martinez*, 2017-NMSC-026, ¶ 32, 401 P.3d 751.

Imposing a tax on a lessee's leasehold interest in state-owned improvements necessarily affects the lessee's *pro forma* calculation, and thus the amount they are willing and able to pay in rent. See, e.g., *Cutter Flying Service, Inc. v. Property Tax Department*, 1977-NMCA-105: "We think there can be little doubt that, should these valuations be allowed to stand, it would have an adverse effect on the rents and fees that the City could charge in the future. And thus, ultimately, the City would bear a large part of the economic burden of the tax"; *United States v. Detroit*, 355 U.S. 466, 472 (1958): "It is undoubtedly true, as the Government points out, that it will not be able to secure as high rentals if lessees are taxed for using its property."

If assessors are allowed to tax state-owned improvements, that will directly lead to reduced income to state land trust beneficiaries, presumptively in the amount of the taxes levied. Of more concern would be prospective lessees that decline to bid on state trust lands because the tax levy renders their business plan infeasible.

Improvements owned by private parties that are situated on leased state trust lands are, and should remain, subject to property taxation.

SIGNIFICANT ISSUES

The Commissioner of Public Lands manages approximately nine million acres of land for the trust beneficiaries. State trust lands were provided to the state with the sole purpose of generating revenue for public schools and other state institutions, such as hospitals and universities, throughout the state. Any taxation that has the effect of diminishing income from state trust land is categorically prohibited by Section 10 of the Enabling Act. In *Lassen v. Arizona*, 385 U.S. 458, 468 (1967), The U.S. Supreme Court held that "the grants cannot be too carefully safeguarded for the purpose for which they are appropriated [and] the purposes of Congress require that the Act's designated Beneficiaries derive the full benefit of the grant." (internal punctuation omitted).

The decision by one county assessor to pursue a novel interpretation of Section 7-36-4 to apply to leasehold interests in improvements on state trust land has created confusion around the issue in a way that potentially runs afoul of the Enabling Act and the New Mexico constitution. The confusion is related to the text of Section 7-36-4 that imposes taxation not just on improvements *owned* by lessees of state trust land, but also on improvements *owned by the state* and only leased to the private lessee.

It would presumptively be unconstitutional to value and tax property owned by an exempt entity. See, N.M. Const. Art. VIII, Sec. 3. The potential for assessors to tax any interest in state trust land acts as a tax on that land itself. Amending the bill as suggested below would confirm that all interests in state trust land and state-owned improvements are exempt from taxation. Lessee-owned improvements would continue to be subject to taxation.

A separate issue raised in the FIR is that the Section 7-36-5 exemption is contested due to the absence of a constitutional amendment allowing such exemptions. The State Land Office is not aware of any formal contests involving that issue. Rather, the confusion that the bill, amended as suggested below, would resolve is over the constitutionality of the Assessor's attempt to impose taxes on any interest in state-owned improvements on state land.

While there is some ambiguity as to how leaseholds are treated under New Mexico law, the most recent, and most definitive, statement is found in *Resolution Trust Corporation v. Binford*, 1992-NMSC-068, holding that "New Mexico courts have always held that leaseholds are personal property; yet we have also noted that a leasehold is an interest in land." The *Binford* court characterized leaseholds as "hybrid" because they are personal property, but are conveyed as real property: "The hybrid nature of leaseholds necessitates that they be conveyable in the same manner as real estate, notwithstanding the fact that a leasehold is personal property." Moreover, under State Land Office rule 19.2.9.18.A NMAC, the "interest of a lessee in a business lease and in the improvements is a personal property interest." Therefore, a fractional interest is personal property, subject to exemption by the Legislature.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to SB 112

TECHNICAL ISSUES

The FIR states that "Under existing law, fractional interests in real property, including leasehold interests, held by nonexempt, profit-generating entities and owned by exempt entities are generally exempt from property taxation." Some clarification of this statement is warranted. As noted above, improvements that owned by nonexempt entities and are located on leased state trust lands are subject to property taxation. The issue this bill seeks to address is solely related to the situation when a nonexempt entity leases improvements owned by an exempt entity.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

The goal of SB 112, HB 295, and the State Land Office concerns expressed herein could all be realized in a simpler and no less effective manner by making the following revision to Section 7-36-4(B)(1):

> improvements of land of an exempt entity if the improvements are owned or leased by a nonexempt entity; these improvements are subject to valuation for property taxation purposes and to property taxation to be paid by the nonexempt entity; provided that improvements, including a leasehold interest in the improvements, are exempt if the improvements are owned by a governmental entity;

This proposed change avoids the specter of assessors attempting to tax interests in state-owned land. It would address the issue of potential taxation of UNM-owned dorms leased to private parties, taxation of RETA-owned transmission line infrastructure leased to private parties, and taxation of State Land Office-owned improvements leased to private parties.

To our knowledge, these are the only three types of state-owned improvements leased to private parties as to which there is a taxation issue.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

There has been a recent and novel effort by certain County Assessors to levy property taxes on the leasehold interest of a lessee in state-owned improvements. Passage of the bill, amended as proposed above, would clarify that all interests in state-owned land and state-owned improvements are not taxable, while not affecting the ability of assessors to tax lessee-owned improvements located on state land.

AMENDMENTS

Page 3, line 15, after "are", strike the text through "facility" on line 25
Page 3, line 15, after "are", insert "owned by a governmental entity"