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FISCAL IMPACT REPORT

SPONSOR HHGAC ORIGINAL DATE 03/17/09
 LAST UPDATED _____ HB 607/HHGACS

SHORT TITLE State Land Lessee Improvement Requirements SB _____

ANALYST Woods

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB474, SB475, SB540, HB605, HB606, HB845

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney Generals Office (AGO)

State Land Office (SLO)

Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

The House Health and Government Affairs Committee (“HHGAC”) substitute for HB 607 amends Section 19-7-14 to specify requirements for competitively bid business leases that the Land Commissioner enters into for planning and development purposes. Those competitively bid business leases must contain certain provisions governing compensation for improvements:

(1) The existing provisions governing compensation for improvements -- Sections 19-7-15 through 19-7-18 and 19-7-51 -- apply “only to the extent that the lessee may be liable under those provisions for the value of improvements that have been placed on the property prior to the effective date of the lease.”

(2) In addition to fixed lease payments, the business lease may provide for a division of gross profits, meaning the difference between the selling price and the appraised value of the land when it is initially leased, between the Land Commissioner and the lessee pursuant to terms established in the lease.

(3) A lessee may not receive more than 25% of the gross profits from the development.

(4) Appraisals must be conducted in compliance with the uniform standards for professional appraisal practice.

The HHGAC substitute also adds a section 2, which provides that the new material pertaining to competitively bid business leases does not affect the validity of any lease issued before July 1, 2009 even if it is renewed after July 1, 2009.¹

There is no appropriation attached to this legislation.

SIGNIFICANT ISSUES

AGO indicates that the HHGAC substitute bill's provisions governing compensation for improvements will cover a business lease for planning and development purposes only if the lease is "competitively bid."

SLO advises that, to date, oil and gas development on state trust lands has generated by far the most revenue, but as those resources diminish and residential and commercial development encroaches upon the trust lands, the greatest value of the land to the trust lies in its potential for residential and commercial development. Because the Enabling Act prohibits the state from using trust resources to make improvements on state trust lands (*Lake Arthur Drainage Dist. v. Field*, 27 N.M. 183, 199 P. 112 (1921)), the two most recent SLO administrations have developed a program for issuing business leases for real estate planning and development on state trust lands which give the lessee an incentive to do master planning and obtain entitlements that will maximize the value of the land and in turn entitle the state and the lessee to share in the profits derived from those improvements. The attorney general has issued an opinion stating that the commissioner does not have authority to enter into leases giving the lessee the right, upon subsequent lease or purchase, to be paid for intangible improvements such as master planning and entitlements obtained by the lessee. Atty Gen. Op. 08-02 (2008). This bill would provide the legislative authority that the attorney general found lacking. SLO adds:

- In order to provide sufficient incentive to attract qualified developers, the SLO suggests that the cap on compensation to the lessee be set at 30% of net profit.
- Also, in order to provide for competitive bidding of existing planning and development leases which will allow the current lessee to maintain the same terms as the existing lease, the SLO suggests additional language to provide for that contingency [See SLO Amendments].

PERFORMANCE IMPLICATIONS

SLO notes that a recent transaction in which trust lands in Rio Rancho were sold to Central New Mexico Community College demonstrates the potential benefit of planning and development leases to the trust. In that transaction, a 25-acre parcel of trust land was appraised at \$375,000 before planning and development. The state's profit from the sale of that 25-acre parcel after three years of planning and development under a business lease (including annexation and

¹ Excerpted from AGO response dated 3-13-09.

master planning) was \$1,475,114, or \$1,100,114 greater than the land value without planning and development. Similar results for the remaining 420 acres under that business lease would produce an additional \$18 million dollars to the trust above the value of the land without planning and development.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SLO notes that several bills have been introduced regarding the commissioner’s authority to enter into leases for planning and development: SB474, SB475, SB540, HB605, HB606, HB845. Further, that current law contains provisions regarding a trust land lessee’s right to received compensation for its improvements from a subsequent lessee or purchaser. NMSA 1978, §§ 19-7-14 through 19-7-18. The substitute bill would provide that the real estate planning and development lessee is not entitled to compensation under those provisions.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

SLO states, “If this bill is not enacted, there may be continuing uncertainty regarding the commissioner’s authority to enter into business leases for state lands which provide compensation to the lessee for master planning and entitlements.”

AMENDMENTS

The SLO suggests an insertion at the end of Paragraph (B) of Section 2 as follows:

, or issuance of a new lease to the same lessee through a competitive bid.

BW/svb