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FISCAL IMPACT REPORT

SPONSOR Bandy ORIGINAL DATE 02/26/09
LAST UPDATED _____ HB 810
SHORT TITLE Title Insurance Notice of Mineral Estate SB _____
ANALYST Lucero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

State Land Office (SLO)

Energy, Minerals and Natural Resources Department (EMNRD)

SUMMARY

Synopsis of Bill

House Bill 810 amends the New Mexico Title Insurance Law to require title insurance policies or title binders to have a conspicuous statement that mineral estate underlying the land covered by the policy may have been severed from the surface estate and that the mineral estate owner may have leased the minerals for development.

The statement must also provide information on the ownership of the mineral estate and available at the office of the county clerk of the county in which the property is located.

The bill provides an effective date of July 1, 2009.

FISCAL IMPLICATIONS

According to the Public Regulation Commission, there is no fiscal impact.

SIGNIFICANT ISSUES

This will have no discernible fiscal implications for the State Land Office. Any party engaging in a land transaction with the NMSLO will be well-advised of these facts through standard notice and contractual provisions. Parties engaged in an exchange with the State Land Office are often required to provide a title opinion or title insurance on the mineral estate.

Given the recent importance of split estate issues, Title Companies should perhaps be required to provide insurance on the mineral title as well as the surface title.

When surface rights and subsurface rights (right to develop minerals) are separate, the property is in a split estate. Split estates are very common in New Mexico and usually are the result of federal reservations of coal, oil and gas, or all minerals from public lands that were patented to private property in various land claim acts (i.e. Homestead Act). State Land Office also reserves ownership of all minerals when a state land surface estate is conveyed to private ownership. Finally, some private landowners sell their mineral rights or may reserve all or part of the mineral interests when they convey the land to another private owner. Mineral rights dominate over surface rights. Many New Mexican landowners do not own the minerals under their land and cannot prevent or limit the mineral estate owner's from extracting those minerals.

This amendment is simply a notice to land buyers that they may not be acquiring the mineral rights to the property and, if a split estate exists, the mineral owner may have leased the minerals for development. (It is also possible the mineral estate owner will develop one or more minerals without leasing to a third party, or federal locatable minerals can be claimed by anyone – without a lease.) The title binder statement may serve an educational purpose and alert unsophisticated land buyers to split estate potential. Further action to determine if a split estate exists is the responsibility of the land or title insurance buyer. Split estates with federally-owned minerals are easy to identify from the original patent (usually recorded with a county and on this website: <http://www.geocommunicator.gov>). Severed state and private mineral interests may occur further along in the chain of title and can be more difficult to identify. Claims on locatable federal minerals will not be recorded with a county clerk and leases of federal, state or private minerals may, or may not be, recorded with a county clerk. Certainty of mineral status will often require employing a real estate attorney or abstractor who has expertise in determining mineral ownership and lease status.

Title binders and insurance policies list all mineral leases that have been recorded with a county clerk as exceptions to the proposed policy. A land buyer may purchase title insurance protection from unrecorded mineral claims and leases by having the first two-thirds of standard exception #7 deleted from the policy. Standard exception #7 is in all title insurance policies and the statement required by HB810 could result in the mineral part of exception #7 being deleted more frequently by policy buyers.

PERFORMANCE IMPLICATIONS

The EMNRD-Forestry Division occasionally acquires land or surface interests in land and determines mineral estate ownership and mineral development potential prior to acquisition. 3.13.20 NMAC requires applicants for the Land Conservation Incentive Act tax credit to be fully aware of either mineral ownership or mineral development potential of donated interests in land. The title insurance statement required by this amendment has no effect on state government land conservation programs.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Many parties engaged in land transactions who do not have counsel will continue to remain ignorant of split estate issues.

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If this bill is not enacted, some land buyers may continue to unknowingly purchase property where the mineral estate has been severed from the surface estate.

AMENDMENTS

This required statement is simply an alert to the potential for a split estate situation. A split estate may, or may not, have existing mineral leases. There the new material on line Page 1. Line 24 should be amended: NOTICE OF ~~MINERAL LEASES~~ SPLIT SURFACE AND MINERAL ESTATES.

DL/svb