



revenue to the state land trust. The commissioner must establish, by rule, criteria for selecting lands to lease, selecting lessees and determining lease provisions. The rules must provide for public notice and competitive bids. The leases may provide for a division of gross or net profits from the development between the commissioner and the lessee pursuant to terms established in the lease reflecting the fair market value of master planning or entitlements, but the state will not be liable for any costs of planning or development.

The new section also contains a paragraph (D) that provides: “[T]he provisions of Sections 19-7-14 through 19-7-18 and 19-7-51 NMSA 1978 shall apply to the leases 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 business lease for planning and development but, unless otherwise stipulated in the lease, those provisions shall not be applicable to any improvements or other increase in value resulting from activities conducted pursuant to the business lease for planning and development.”<sup>1</sup>

### **SIGNIFICANT ISSUES**

The Attorney General’s Office indicates that Paragraph D mentioned above is ambiguous. It is unclear how a lessee would be “liable” for improvements that a lessee placed on property before the lessee entered into a lease. It is also unclear whether the language “unless otherwise stipulated in the lease” is intended to authorize the commissioner to carry forward with the “change in value” profit sharing arrangements in prior or existing leases, which we opined in AGO 08-02 were contrary to the cited statutory provisions. SGO states, “Paragraph (B) of the new section 19-7-9.1 requires the land commissioner to adopt rules providing for public notice and competitive bids but does not specify the commissioner’s rule-making authority with respect to the making of awards of such leases.”

SLO advises that the commissioner of public lands has an existing program for issuing business leases for real estate planning and development on state trust lands. 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. Arty Gen. Op. 08-02 (2008). This bill would provide the legislative authority that the attorney general found lacking.

EMNRD indicates that the State Parks Division (SPD) currently leases land from the State Land Office (SLO) at six state parks. The relationship between SPD and SLO is an important one for the state park system and the visitors to state parks. Leases for state parks on SLO land are addressed by the SLO under a business lease or commercial lease. Five of the existing state parks leases are covered under an SLO commercial lease, and one under an SLO agricultural (grazing) lease. HB 8451 would negatively impact if it applies to the renewal of any existing SLO commercial lease, or impacts any new commercial lease that might be sought by SPD (e.g. for additional lands that might be incorporated into an existing park, or SLO lands to be incorporated into a new state park). EMNRD concludes that, in either of these situations (a commercial lease renewal or a new commercial lease), state parks would not be eligible to bid unless parks was one of the eligible criteria identified in the proposed Section 19-7-9.1.A. If state park use was

---

<sup>1</sup> Synopsis excerpted from AGO response dated 2-20-09.

not identified in the criteria for selecting lands to lease, renewing a lease and/or establishing a new lease would be problematic. It is not clear why SLO lands that is presently included within a state park, or SLO lands that might be considered for inclusion in a state park in the future should be subjected to competitive bidding - or why SPD should be required to actually formally bid for such a lease.

### **PERFORMANCE IMPLICATIONS**

SLO states, “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 SLO’s profit from the sale of that 25-acre parcel after three years of planning and development under a business lease (including annexation and 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.”

### **ADMINISTRATIVE IMPLICATIONS**

SLO suggests that the bill would require a certain amount of rulemaking by the State Land Office.

EMNRD states, “There would be no impact on SPD from HB 845 on agricultural leases. However, anything other than grazing moves the lease from agricultural to commercial status per the SLO.”

### **OTHER SUBSTANTIVE ISSUES**

EMNRD states, “It seems clear that SLO land either in or adjacent to state parks is an inappropriate subject for either business or residential development or for competitive bidding. It also seems clear that all of New Mexico’s current state parks would be ideal locations for residential development since they are extremely scenic and provide quality recreational opportunities. If HB 845 passes in its current form, the five existing state parks with SLO commercial leases could not be renewed unless SPD prevailed in the competitive bidding process.”

### **RELATIONSHIP**

Relates to SB 633 (same); HB 606 (“Require Development Lease Notice and Bidding”); HB 605 (“Review of Development Business Leases”); SB 475 (“AG Review of Development Land Leases”); SB 474 (“State Land Lessee Improvements Requirements”); HB 607 (same); HB 610 (“Land Commissioner Classification and Accounting”).<sup>2</sup>

### **ALTERNATIVES**

AGO states: “We advised in AGO 08-02, that in order to change the law, the legislature must “establish a formula for valuing ‘intangible improvements.’” No formula is established to value either “entitlements,” whatever they are, or “master planning.” An alternative, therefore, would be for the legislature to establish such formula.”

---

<sup>2</sup> Excerpted from AGO response.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The AGO believes that the amendments proposed under HB 845 and SB 633 would provide the needed legal authorization and would satisfy the concerns raised in Attorney General Opinion 08-02.

SLO anticipates that 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**

EMNRD suggests that on Page 3, Line 9, after "residential development," insert: "with the exception of any existing or proposed leases with the state parks division,"

BW/mc