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FISCAL IMPACT REPORT

ORIGINAL DATE 02/08/13

SPONSOR Candelaria LAST UPDATED _____ HB _____

SHORT TITLE Guadalupe-Hidalgo Treaty Adherence SM 10

ANALYST Wojahn

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		~\$75.0 - \$100.0	~\$75.0 - \$100.0	~\$225.0 - \$300.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

Senate Memorial 10 (SM 10) requests that the Attorney General investigate New Mexico's adherence to the provisions and requirements of the Treaty of Guadalupe Hidalgo (Treaty) in order to determine whether the State has any outstanding liability for harm to landowners. SM 10 also requests the Attorney General's Office report findings and recommendations to the appropriate interim legislative committee by December 1, 2013.

FISCAL IMPLICATIONS

According to a response from the AGO, there is no appropriation of additional operating funds to do the study requested. While the agency does have an Assistant Attorney General assigned to examine legal issues related to the Treaty, it does not have sufficient staff available for compliance investigations. Without additional funding, it would be problematic for the AGO to fully comply with the memorial. The amount inserted in the table above reflects a realistic cost estimate for the activities required by SM 10. This includes the approximate cost of salaries and benefits of one Assistant Attorney General FTE specifically dedicated to compliance investigations of the Treaty. More FTE could be required to effectively implement the proposed legislation.

SIGNIFICANT ISSUES

The AGO response indicates SM 10 does not create or amend any law, but it does raise legal issues regarding what litigation options, if any, may be available to pursue even if “any outstanding liability for harm to landowners” from the Treaty was found to have occurred. Previous research concluded that U.S. Supreme Court decisions applying governing Statute of Limitations law prevented bringing lawsuits to pursue claims under the Treaty.

Previous research also indicated that the most viable option to pursue was to request U.S. Congressional action regarding redress for the way the Treaty was implemented and complied with or not.

As a legal/ethical matter, the memorial places the Attorney General in a potential conflict of interest. On the one hand, the Attorney General is the lawyer for the State, who defends the State in court and brings legal actions on behalf of the State. On the other hand, the memorial requests the Attorney General to determine whether the State has any legal liability under the Treaty, which the Attorney General would also be obligated to defend against if such an action were brought. It may therefore be more appropriate for another public official or agency to be asked to comply with the memorial’s request.

PERFORMANCE IMPLICATIONS

Performance implications for the AGO are noted above in the Fiscal Implications section.

ADMINISTRATIVE IMPLICATIONS

An appropriate adjustment in the AGO budget may be necessary to provide funds for carrying out the memorial’s request, but given the conflict of interest noted above it might also be more appropriate to assign the memorial’s request to another state official or agency.

MEW/svb