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## FISCAL IMPACT REPORT

**SPONSOR** Griggs **ORIGINAL DATE** 02/04/14  
**LAST UPDATED** \_\_\_\_\_ **HB** \_\_\_\_\_

**SHORT TITLE** Land Transfer Cost & Benefit Study **SB** 256

**ANALYST** Armstrong

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		
\$75.0	Continued	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB 1, HB 102, SM 47  
 Relates to Appropriation in the General Appropriation Act

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
 State Land Office (SLO)  
 Attorney General’s Office (AGO)  
 Indian Affairs Department (IAD)  
 Economic Development Department (EDD)

No Response  
 Energy, Minerals and Natural Resources Department (EMNRD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 256 appropriates \$50 thousand to SLO and \$25 thousand to EMNRD to study and report the costs and benefits of New Mexico assuming management responsibility for and title to federally owned “resource production lands” within the state. The bill requires the agencies to report the results to the appropriate legislative interim committee by October 1, 2014. SB256 includes an emergency clause.

### FISCAL IMPLICATIONS

The bill’s appropriation of \$75 thousand is a nonrecurring expense to the General Fund. Any unexpended or unencumbered balance at the end of FY15 shall revert.

SB 256 provides funding for a very short-term study to be completed by September 2014 in order for it to be presented to the legislative interim committees by October 1, 2014. According to SLO analysis, the complexity of the work involved will require dedicated and increased resources and expertise that would exceed the appropriated amount. There are approximately 27 million acres of federal lands in New Mexico administered by the four major land management agencies and the Department of Defense. Conducting an assessment to identify which of these lands are “resource production lands,” and an assessment of the costs and benefits associated with transferring title and management responsibilities to the state with respect to any of the identified lands, would require a level of resources not provided for in the bill.

While it is expected that significant resources would be needed from both agencies, SLO states that it may be precluded from using Land Maintenance funds to absorb any shortfall between the appropriated amount and what would be needed to complete the study. SLO’s budget is funded through the revenue it produces for State Land Trust beneficiaries (Land Maintenance Fund). LMF monies must be used to support efforts to benefit the Trust and its beneficiaries and it is unclear whether the study contemplated by the legislation is aimed at advancing the interests of the Trust. *See Ervien v. U.S.*, 251 U.S. 41 (1919) (holding that the Enabling Act requires use of State Trust Land revenue exclusively for Trust purposes).

## **SIGNIFICANT ISSUES**

While SB 256 appropriates funds for and requires SLO and EMNRD to study the costs and benefits of assuming management responsibility for and title to federally owned lands, the utility of such a study is unclear. The U.S. Constitution, through the Property Clause, grants the federal government expansive authority in the management of federally owned lands. Moreover, the Enabling Act for New Mexico provides that the people of the state “...forever disclaim all right and title to the unappropriated and ungranted public lands lying within the boundaries thereof...” Thus, decisions to transfer federal lands to New Mexico lie with the federal government. Still, a legal theory exists that the state’s Enabling Act established a contractual relationship in which the federal government has not fulfilled the purported obligation that it “shall” sell public lands within the state and transfer five percent of the proceeds to the state to support public schools. It is unclear and there is a lack of precedent regarding whether the language that this theory relies upon requires sale of *all* federally owned public land in New Mexico. However, that is a very broad interpretation of a relatively small provision in the Enabling Act, especially in light of the powers granted to the federal government under the Property Clause and the deference that the judiciary has traditionally granted the federal government on such matters.

According to SLO analysis, SLO and EMNRD have an excellent working relationship but much of the necessary information to conduct a study of this nature would have to be obtained from multiple federal agencies over which the state agencies have no jurisdiction. SLO has an ongoing cooperative relationship with federal agencies regarding a variety of land management issues, including work on proposed land exchanges that allow each party to acquire lands that serve their respective missions. Work on the requested study could complicate and disrupt SLO’s cooperative relationship with those federal agencies and slow down or disrupt the completion of land exchanges that can be completed in the short term under existing law or narrowly tailored federal legislation. A transfer of all federal “resource production lands” requires federal legislation which is not pending and does not appear to be forthcoming in the near future.

## RELATIONSHIP

LFC's recommendation includes a special appropriation for \$200 thousand for a study to assess the feasibility of acquiring federal disposal lands for the purpose of generating revenue.

Senate Bill 1 appropriates \$250 thousand from the general fund to SLO to study whether it is feasible to acquire a portion of lands that are identified by the BLM as "disposal lands." According to SLO, this approach is consistent with existing federal law, maintains a collaborative relationship with our federal partners, is targeted at only the lands BLM has identified for disposal, and allocates sufficient resources to conduct the study.

House Bill 102 creates the transfer of public lands task force.

Like SB 256, Senate Memorial 47 requests that SLO and EMNRD study the costs and benefits of New Mexico assuming management responsibility for and title to federally owned "resource production lands."

## TECHNICAL ISSUES

The bill does not define the term "federal production lands" which are a central focus of the study. It is unclear whether the agencies are to work cooperatively or independently.

## OTHER SUBSTANTIVE ISSUES

AGO analysis states:

"The designation of SB 256 as "necessary for the public peace, health and safety" to conduct and report a study regarding the potential transfer of federal lands as an emergency (SB 256, Section 2) is questionable. Generally, "laws providing for preservation of public peace, health, and safety are essentially police measures and represent an exercise of [police power]." *See State ex re. City of Albuquerque v. Lavender*, 1961-NMSC-096, ¶ 24. However, the New Mexico Supreme Court also granted the legislature flexibility, in that it recognizes that "large discretion is necessarily vested in the Legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests." *Id.* (citing *State v. Spears*, 1953-NMSC-033, ¶ 21) (internal quotations omitted). While it does not appear that the aforementioned study is an emergency, as it is not a police measure, the legislature is granted flexibility in this regard. Notwithstanding, because this is a potential legal issue, the designation of an emergency should be dropped and an effective date of implementation should be instituted."

HM 47 requests a study very similar to that paid for by SB 256, but excludes "federally reserved tribal lands" from the scope of the study. The Legislature may wish to amend SB 256 to include the same language to avoid conflict with tribes and Pueblos.

JA/svb