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FISCAL IMPACT REPORT

SPONSOR Martinez J/Trujillo, L/
Trujillo, CH/Rubio/ ORIGINAL DATE 2/17/17
McCamley LAST UPDATED 2/21/17 HB 292 ec

SHORT TITLE No State Land for Border Wall SB _____

ANALYST Armstrong

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|---------------|------|---------------------------------|---|
| FY17 | FY18 | FY19 | | |
| | See narrative | | Nonrecurring | Current School Income Fund / General Fund |
| | | | Nonrecurring | Other State Trust Land Beneficiaries |

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

General Services Department (GSD)
 Office of the Attorney General (OAG)
 State Land Office (SLO)
 NM Border Authority (NMBA)

SUMMARY

Synopsis of Bill

House Bill 292 (HB292) prohibits the use, sale, lease, ease, transfer, or other disposal of property owned or held in trust by New Mexico for use as a site for a federal barrier along the U.S.-Mexico border. The bill does not apply to barriers to prevent the movement of livestock. This bill includes an emergency clause.

FISCAL IMPLICATIONS

While nonrecurring revenues, such as oil and gas royalties, are deposited in the land grant permanent fund (LGPF), recurring revenue from state trust lands, including bonus payments

from easements, lease sales, and monthly lease payments, are deposited in the state lands maintenance fund. This fund supports SLO operations and the balance is distributed to beneficiaries at the end of each fiscal year, with approximately 80 percent distributed to the public school beneficiary (current school fund) which reverts to the general fund.

A 1907 proclamation by President Theodore Roosevelt, known as the “Roosevelt Reservation,” set aside 60 feet of land on the U.S. side of the border with Mexico from “entry, settlement or other form of appropriation under the public land laws,” and restricted state trust lands on the border. Nonetheless, SLO anticipates that a federal project to build a barrier would include lands outside of the 60-foot strip.

SLO analysis notes:

To date, the federal government has not contacted the state land office to acquire or use state trust land for construction of a barrier. However, there are approximately 22.25 miles of state trust lands arrayed along the New Mexico-Mexico border where a contemplated federally constructed barrier would be located. Assuming the need for a 200-foot wide easement and applying current state land office pricing for a 35-year easement, the state land office estimates that granting an easement would generate approximately \$2.88 million for the state lands maintenance fund in the year that the easement is issued, primarily benefiting public schools.

If an easement were issued in FY18 at SLO’s estimate of \$2.88 million, approximately \$2.3 million would be distributed to the current school fund and revert to the general fund. Another \$576 thousand would be distributed to other state trust land beneficiaries.

However, the federal government could exercise its eminent domain authority rather than entering into an easement, and provide SLO with “just compensation” for a taking as required by the U.S. Constitution. The amount of such compensation is indeterminate at this time. If the land were taken rather than eased, this would be one-time revenue and would be deposited in the LGPF and not directly distributed to trust land beneficiaries.

SIGNIFICANT ISSUES

According to SLO:

The federal government has eminent domain authority, which the state has no power to regulate. *See United States v. Alcorn*, 80 F.2d 487, 489 (9th Cir. 1935); *United States v. Certain Parcels of Land in Peoria County, Ill.*, 209 F. Supp. 483, 486 (S.D. Ill. 1962), *aff’d*, 314 F.2d 825 (7th Cir. 1963); *United States v. Certain Parcels of Land in Williams County, N.D.*, 178 F. Supp. 313, 318 (D.N.D. 1959). Thus, the only effect of the proposed legislation would be to restrict state agencies from engaging in consensual transactions that might provide more favorable terms than federal condemnation proceedings.

Echoing this point, OAG analysis states:

Despite the actions of HB292, the Federal Government may be able to take or obtain an easement across state land for the construction of a border barrier, using its eminent domain powers. *See Okla. ex rel. Phillips v. Guy F. Atkinson Co.*, 313 U.S. 508, 534 (1941). This is particularly true given the Federal Government’s broad authority over immigration and national security matters. *See Arizona v. United States*, 132 S. Ct. 2492 (2012).

ADMINISTRATIVE IMPLICATIONS

According to OAG analysis:

If challenged, HB292 could require the Attorney General to devote resources to defend the law, including a potential judgment of attorney's fees to a party successfully challenging the law. HB292 provides no additional appropriation to the OAG for these litigation defense costs.

JA/al