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FISCAL IMPACT REPORT

SPONSOR Ingle ORIGINAL DATE 2/19/17
 LAST UPDATED 3/10/17 HB _____

SHORT TITLE Land Commissioner Review of Nat'l Monuments SB 364/aSCONC

ANALYST Armstrong

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
	Indeterminate			

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the Attorney General (OAG)

State Land Office (SLO)

SUMMARY

Synopsis of SCONC Amendment

The Senate Conservation Committee amendment removed provisions from the bill addressing the circumstance of a proposed designation of a national monument that:

1. directed the governor to request information regarding a proposed national monument; and
2. directed the governor, attorney general, and commissioner of public lands to determine whether the proposed area is the smallest area necessary for the “items” to be protected by the designation., and authorized the attorney general to bring an action to so limit the area of designation.

Synopsis of Bill

Existing statute provides procedures for the acquisition or relinquishment of legislative authority from or to the federal government. 19-2-2 NMSA 1978. Transfer of jurisdiction is not effective unless the Legislature adopts a resolution approving it. Senate Bill 364 (SB364) amends this statute to provide the commissioner of public lands, in addition to the governor and attorney general, the opportunity to comment and make recommendations to the Legislature on contemplated changes to jurisdiction.

FISCAL IMPLICATIONS

There are no direct fiscal impacts from SB364. SLO notes national monument designations that landlock state trust lands can prevent full economic use of those lands and have a negative effect on revenues. However, the agency also states it is not clear the bill would have a positive effect.

SIGNIFICANT ISSUES

National monument designations are made regarding federal lands, and such designations can be made without the state ceding its concurrent legislative jurisdiction over such lands. While the state has a legitimate interest in whether a monument designation occurs, it is not clear that the state's decision whether to cede its concurrent jurisdiction is or should be affected by a determination of whether the land or other area proposed to be designated a national monument is the smallest area necessary for the proper care and management of the items to be protected by the designation. On this point OAG analysis stated the provisions dealing with recommendations regarding national monument designations could be set forth in a new Article, to avoid the implication or perception that the state has the authority to prevent such designation.

OAG analysis notes the federal government may exercise legislative authority over land purchased with the consent of a state legislature under the federal Constitution, Art. I, Sec. 8, Cl. 17. Further:

The federal Antiquities Act authorizes the President to designate national monuments. 54 U.S.C.A. § 320301. A designation of a national monument is therefore not an acquisition of federal legislative authority over land by purchase with consent of a state legislature. Rather, it is a change in status of land that is already owned or controlled by the federal government. If SB364 is intended to provide the state legislative veto over designations of national monuments, it would fail, because such designations do not fall under Art. I, Sec. 8, Cl. 17 of the Constitution. (And, absent such a Constitutional basis, a state law that conflicted with the Antiquities Act is invalid under the Supremacy Clause of the Constitution).

Proposed Subsection D of NMSA 19-2-2 provides that the governor, the commissioner of public lands, and the attorney general shall make a determination as to the size of the proposed national monument. It is not clear as to whether this determination is jointly or separately made, or address the consequences of the failure to reach an agreed upon determination of these three separately elected officials.

TECHNICAL ISSUES

The federal Antiquities Act uses the term “object,” rather than “item” as used in SB364, for things to be protected by a national monument designation.

JA/sb/al