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## FISCAL IMPACT REPORT

|  |                      |        |                      |
|--|----------------------|--------|----------------------|
|  | <b>ORIGINAL DATE</b> | 2-7-09 |                      |
| <b>SPONSOR</b> Steinborn                                 | <b>LAST UPDATED</b>  | 2-8-09 | <b>HB</b> 605        |
| <b>SHORT TITLE</b> Review Of Development Business Leases |                      |        | <b>SB</b> _____      |
|  |                      |        | <b>ANALYST</b> Woods |

### APPROPRIATION (dollars in thousands)

| Appropriation |      | Recurring<br>or Non-Rec | Fund<br>Affected |
|---------------|------|-------------------------|------------------|
| FY09          | FY10 |                         |                  |
| NFI           | NFI  |                         |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HBs 606, 607, 610; SBs 474, 475

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

State Land Office (SLO)

Attorney Generals Office (AGO)

Department of Finance and Administration (DFA)

### SUMMARY

#### Synopsis of Bill

This legislation provides for review of state land business leases for real estate planning or development by the pertinent municipal governing body and the board of county commissioners. The bill requires such governing bodies to hold a public hearing to determine whether the proposed lease is in the best interests of the municipality or county. Within thirty days after the public hearing the governing body must issue a decision at a public meeting as to whether or not the proposed lease is in the best interest of the municipality or county.<sup>1</sup>

There is no appropriation attached to this legislation.

<sup>1</sup> Extracted from the AGO response which carries the caveat, *This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Opinion letter. This is a staff analysis in response to the agency's, committee's or legislator's request.*

## **SIGNIFICANT ISSUES**

SLO indicates, that under the New Mexico Constitution (art. XX, § 2), the commissioner is the state officer designated to manage trust lands to provide support for common schools and other activities. As residential and commercial development encroaches upon the trust lands, certain uses of the land become unviable and the highest and best use of the land (and its greatest value to the trust) lies in its potential for residential and commercial development. Because the Enabling Act prohibits the state from using trust resources to make improvements on trust lands (*Lake Arthur Drainage Dist. v. Field*, 27 N.M. 183, 199 P. 112 (1921)), the commissioner of public lands must rely on lessees to do real estate planning and development on state trust lands and thereby realize the benefit such planning and development may provide to the institutions supported by the trust. Because a local determination of whether a planning and development lease is in the best interests of the county or municipality does not under the language of the bill (and cannot constitutionally) affect the commissioner’s decision to issue such a lease, it is unclear what a local review requirement is intended to achieve. Further, because the bill would add enormously to the burden of issuing leases for real estate planning and development, and the State Land Office does not have the resources to participate in the local review process contemplated by the bill, the proposed legislation would as a practical matter preclude leasing for real estate planning and development purposes, much to the detriment of the trust.

## **PERFORMANCE IMPLICATIONS**

SLO suggest that, because the bill would add enormously to the burden of issuing leases for real estate planning and development, and the State Land Office does not have the resources to participate in the local review process contemplated by the bill, the proposed legislation would as a practical matter preclude leasing for real estate planning and development purposes, much to the detriment of the trust. At the very least, the legislation would deter potential lessees from seeking opportunities to lease trust lands for real estate planning and development.

## **ADMINISTRATIVE IMPLICATIONS**

SLO states: “Because the bill would add enormously to the burden of issuing leases for real estate planning and development, and the State Land Office does not have the resources to participate in the local review process contemplated by the bill, the proposed legislation would as a practical matter preclude leasing for real estate planning and development purposes, much to the detriment of the trust.”

DFA states: ‘HB 605 makes certain requirements and conditions of the local governing body with respect to setting up the public hearing in order to inform interested persons and provide them the opportunity to give their input at the hearing.’”

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SLO indicates that, under the Enabling Act (which is incorporated into the New Mexico Constitution, *see* N.M. Const., art. XXI, § 9), the trust lands must be managed solely for the benefit of the institutions they were granted to support. As stated in Article XIII, § 1 of the Constitution, the trust lands must be “‘held or disposed of . . . for the purposes for which they

have been or may be granted.” By requiring local review to determine whether a proposed planning and development lease is in the best interests of the county or municipality, the proposed legislation is fundamentally at odds with the New Mexico Constitution and the Enabling Act.

AGO adds that House Bill 605 conflicts with Senate Bill 475 and House Bill 606. While House Bill 605 provides for review by the pertinent municipal governing body and board of county commissioners in order to determine whether the proposed lease is in the best interests of the municipality or county, Senate Bill 475 provides for review by the attorney general to determine, in part, whether the proposed lease is in the best interests of the beneficiaries of the lands to be included in the lease. House Bill 606 does not require such review of leases but rather requires that leases be issued after notice and competitive bid.

### **OTHER SUBSTANTIVE ISSUES**

SLO suggest that the bill would substantially delay the issuance of leases for real estate planning and development on state trust lands. Further, the bill provides no standard under which the county or municipality is to determine whether the proposed lease is “in the best interests of the county or municipality.”

AGO states: “Business leases that contain payment for intangibles have been found to be unauthorized under AG Opinion 08-02 (2008).”

### **AMENDMENTS**

None suggested by respondents.

BW/mt