

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 2-18-09
 SPONSOR Fischmann LAST UPDATED 2-26-09 HB _____
 SHORT TITLE Land Commissioner Classification & Accounting SB 539
 ANALYST Woods

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total			\$0.1 - See Fiscal and Performance Implications		Recurring	Land Stewardship 09800/ General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HBs 605, 606, 607, 610; SB 474, 475

SOURCES OF INFORMATION

LFC Files

Responses Received From

State Land Office (SLO)
 Attorney Generals Office (AGO)
 State Auditor's Office (OSA)
 Department of Finance and Administration (DFA)

Other Input Received From

Quality Growth Alliance of Dona Ana County

SUMMARY

Synopsis of Bill

SB 539 enacts a new section of Chapter 19, Article 1 that requires the commissioner of public lands, in consultation with the state auditor, to compile a manual prescribing a uniform classification of accounts and a uniform system for budgeting, reporting and recordkeeping. That manual must include (1) the reporting of appropriations received and expended; (2) all revenue received by the state from each lease and contract entered into by the commissioner; and (3) a system for keeping, locating and tracking all documents related to transactions involving state lands, including all sales, leases and trades of state lands and any interest in those lands, all assignments of state leases and contracts and, if issued by competitive bid or proposal, all bids received for any transaction involving state land. The uniform system must require the submission of at least quarterly financial reports. The manual must be filed as required by the State Rules Act.¹

There is no appropriation attached to this legislation.

FISCAL IMPLICATIONS

DFA states that, “Because the bill calls for a system for maintaining and tracking documents related to state land transactions, the commissioner could argue for information technology enhancement funding. More certain expenses resulting from the bill include the printing of the manual and the staff time devoted to meeting the requirement for making quarterly financial reports and keeping the system updated. These costs should be relatively insignificant for the State Land Office since much of the needed data is readily available at present.”

SLO indicates that, in 1990, the legislature directed the commissioner to develop the ONGARD system presently used to record and report transactions involving trust lands. See NMSA 1978, § 19-10B-1 *et seq.* That system provides a comprehensive classification of accounts capable of generating reports and utilization for recordkeeping purposes. As a result, there are no fiscal implications with maintaining operation of the system currently in place. However, should a new system be implemented, the SLO would incur significant costs associated with employing a business model, developing a new software device, creating new employment positions for the sole purpose of developing the aforementioned items as well as staff to operate and maintain the system post development.

SIGNIFICANT ISSUES

DFA states, “The intention of the bill is to mandate more transparency at the State Land Office due to allegations of improper state land transactions. Requiring all bids received for any transaction involving state land to be maintained (as the bill does) is a particularly effective way of ensuring such transparency.” DFA further advises that, “It should be noted that the commissioner must consult with the State Auditor in order to initially compile the manual for reporting and recordkeeping, but thereafter can review and revise the manual as he/she deems

¹ 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.*

appropriate. This allows the party responsible for reporting and recordkeeping to change reporting and recordkeeping requirements as he/she sees fit (while still meeting the bill's standards).”

SLO states that, “On its face, this bill seeks to create an unnecessary system as ONGARD currently addresses the issues identified by the bill. ONGARD allows for the reporting of all appropriations received and expended. The SLO finance division currently produces reports for appropriations and expenditures. Furthermore, this division produces monthly reports of all revenue received by the state from each lease or contract.” SLO further states:

- The SLO is currently developing the Document Management System and electronically imaging all documents related to land exchanges, land sales, leases and contracts. Based on the rate of imaging current leases, this process is estimated to be current within four to five years.
- Pursuant to budgeting, the SLO budget falls under the authority of the Legislature and must comply with the rules and regulations of the state budget division.

PERFORMANCE IMPLICATIONS:

The State Auditor’s Office indicates that Section 1.B of the act requires “the submission of at least quarterly financial reports to the state auditor and the legislative finance committee.” The act does not specify what the quarterly reports would entail and does not specify what the state auditor or the LFC should do with the financial reports. Further that, although the language is unclear, if Section 1.B of the act in fact requires an “audit” of the quarterly reports, the cost of the audits would have a fiscal impact on the Commissioner of Public Lands since the State Audit Act, Section 12-6-4 NMSA 1978, states “the reasonable cost of all audits shall be borne by the agency audited...” If the act requires that the cost of the audits shall be absorbed by the state auditor, then additional FTE(s) or an appropriation for contractual services should be provided to the state auditor for this purpose.

DFA adds that staff time required for making quarterly financial reports and keeping the reporting and recordkeeping system updated will have to be diverted from other uses.

ADMINISTRATIVE IMPLICATIONS

SLO states, “To the extent that the legislation replicates existing reporting and recordkeeping procedures, it would substantially increase the administrative burdens of the State Land Office in developing and implementing a new system.”

RELATIONSHIP:

AGO notes that the legislation relates to HB 605 (“Review of Development Business Leases”); SB 475 (“AG Review of Development Land Leases”); SB 474 (“State Land Lessee Improvements Requirements”); HB 607 (same); HB 606, SB 540 (“Require Development Lease Notice and Bidding”). HB 610 is a duplicate.

OSA adds, “The SHARE system already includes a uniform classification of accounts and a

uniform system for budgeting and recordkeeping. Adopting a new system for this purpose may be a duplication of effort and may conflict with the SHARE system. For example, Section 1.A. (1) and (2) of the act refers to the reporting of all appropriations received and expended, and all revenue received by the state from each lease or contract entered into by the commissioner. The SHARE system is currently capable of accounting for most of these types of transactions.”

SLO suggests that the bill overlaps and potentially conflicts with the ONGARD Act, NMSA 1978, § 9-10B-1 *et seq.*

TECHNICAL ISSUES

OSA advises that Section 1.A of the proposed act states “The commissioner of public lands, in consultation with the state auditor, shall compile a manual prescribing a uniform classification of accounts and a uniform system for budgeting, reporting and recordkeeping...” The act should include consultation with the “state controller” rather than the state auditor since the state controller administers the statewide SHARE system which includes a uniform classification of accounts and a procedures manual. A manual or system developed by the commissioner of public lands should be consistent and compatible with the SHARE system. Also, the act should include consultation with the state purchasing division for the competitive proposal or bidding processes since the General Services Department is responsible to promulgate rules for this purpose in accordance with the State Procurement Code.

SLO states, “Development of a manual to outline the procedures utilized currently would require staff to communicate with each division to articulate the methods used for reporting and recordkeeping. The efforts of IT and the records division to integrate ONGARD as a more multi-faceted program capable of reporting, recordkeeping and document management are increasing the efficiency and accessibility sought by this bill. The manual itself will be subject to amendment and changes as the processes currently being employed may be changed through further technological advancement.”

OTHER SUBSTANTIVE ISSUES

SLO indicates that, as ONGARD is the operative system, requiring the development of a new system to carry out the same function will increase technical and administrative costs as well as create potential issues with the current administration of ONGARD which is a shared program with the Taxation and Revenue Department as well as OCD.

OTHER COMMENTS

Commenting on the legislation, Quality Growth Alliance of Dona Ana County notes the following:

Over the last several years, the State Land Office has engaged in several property leasing and sales programs on school trust lands in the Las Cruces area. Many of these transactions have been done through complicated Business Planning Leases that involve payment or other compensation to the lease holders for a variety of property improvements. Partially out of concern for the apparently high compensation of the lease holders with respect to their actual investments in improvements, we have been actively trying to get State Land Office information to make possible the tracking of the costs for those improvements, and other details of these transactions.

Our efforts to get information about these large transactions and their details have consistently met with difficulties at the State Land Office. When members of our organization have inquired about specific leases, we have received inconsistent information about whether they even exist. We have been told it will take weeks to find particular pieces of data. When we have asked for records of specific transactions that may have occurred, the answers have been incomplete. When inquiring about a paper trail on one transaction, one of our members was once told "we only have a verbal record on that." But this was a large value transaction which normally would have been well documented.

Similar problems were encountered by our Mr. Nate Cote, our State Representative, when we asked for his help in tracking down State Land Office Records.

We assume the staff of the State Land Office were doing their best to provide us with information we had a clear right to obtain. That means the problems we have experienced are caused by the staff being unable to do an adequate job of record keeping. In the work of the State Land Office, with thousands of transactions routinely under way, some involving hundreds of millions of dollars, detailed and accurate record keeping are of paramount importance. Without adequate records, the staff cannot be able to track what is going on, and audits to verify proper conduct of the state's business cannot be carried out.

We are concerned that the State Land Office cannot be run efficiently, and may be routinely losing or wasting large sums of public money, to the detriment of the public in general, and the beneficiaries of the State Land Office programs. And, of course, where there is a lack of transparency, auditing, and public oversight, there is also a risk of misappropriation of funds.

The presence of a thorough and professional record keeping system in the State Land Office, properly operated and maintained, will provide the public and the beneficiaries with the ability to access public records and for outside audits to be conducted, and will help ensure that the proceeds of sales of land and minerals is properly accounted to the beneficiaries and the taxpayers.

This legislation does not require that the Land Office make significant investments to duplicate or unwind current record keeping systems. It does require that the systems be coordinated in a manner that supports competent day to day management, and transparency that enables the public and the beneficiaries to have confidence in the management practices of this agency.

ALTERNATIVES

SLO suggests to amend the bill to create reporting timeframes instead of development of a new system to replace the current system.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Reporting, recordkeeping, and document accessibility will continue under the current policies and procedures of the SLO.

AMENDMENTS:

AGO notes, “It may be useful for the bill to specify at paragraph B ‘to whom’ the quarterly financial reports are to be submitted by the land commissioner.”

OSA suggests:

Section 1.A should have the commissioner of public lands consult with the state controller and the state purchasing division rather than the state auditor to compile the manual.

Section 1.B should specify what the quarterly reports should include, and what the state auditor and legislative finance committee is required to do with the quarterly reports. If an audit of the quarterly reports is required, the act should provide a recurring appropriation to cover the cost of the quarterly audits.

BW/mt