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FISCAL IMPACT REPORT

SPONSOR	Griego, P.	ORIGINAL DATE	02/20/09	
		LAST UPDATED	03/16/09	HB
SHORT TITLE	Land Commissioner Business Leases	SB	633/SFI#1	
		ANALYST	Woods	

APPROPRIATION (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB474, SB475, SB540, HB605, HB606, HB607

SOURCES OF INFORMATION

LFC Files

Responses Received From
State Land Office (SLO)

No Response Received From
Attorney Generals Office (AGO) ¹

SUMMARY

Synopsis of Senate Floor Amendment

Senate Floor Amendment 1 to Senate Bill 633 effects the following:

On page 3, line 15, strike "provide for" and insert in lieu thereof "require".

Synopsis of Original Bill

This bill would add a section to Chapter 7 of Title 19 (Sale and Lease of State Lands) authorizing the commissioner of public lands to enter into business leases primarily for the planning and development of state lands that have potential for commercial or residential development with such terms and conditions as the commissioner deems best for the purpose of maximizing revenue to the state land trust. The commissioner would be required to promulgate rules (i)

¹ As of 2-20-09.

providing for submission of competing development proposals in response to public notice and (ii) setting forth criteria for selecting land to lease, selecting lessees and determining lease provisions. Lease provisions could include allocation between the commissioner and the lessee of “gross or net profits from the development . . . reflecting the fair market value of master planning or entitlements, but, in no event shall the commissioner or the state be liable for any costs of planning or development.” Finally, with respect to existing statutes authorizing certain lessee improvements and requiring a subsequent lessee or purchaser to pay for payment for such improvements regarding compensation payable to former lessees by a subsequent lessee or purchaser on account of improvements placed on the land by the former lessee, the legislation would state as follows: “[T]he provisions of Sections 19-7-14 through 19-7-18 and 19-7-51 NMSA 1978 shall apply to the leases only to the extent that the lessee may be liable under those provisions for the value of improvements that have been placed on the property prior to the effective date of the business lease for planning and development but, unless otherwise stipulated in the lease, those provisions shall not be applicable to any improvements or other increase in value resulting from activities conducted pursuant to the business lease for planning and development.”²

FISCAL IMPLICATIONS

None suggested by SLO.

SIGNIFICANT ISSUES

SLO indicates that the commissioner of public lands has an existing program for issuing business leases for real estate planning and development on state trust lands. The attorney general has issued an opinion stating that the commissioner does not have authority to enter into leases giving the lessee the right, upon subsequent lease or purchase, to be paid for intangible improvements such as master planning and entitlements obtained by the lessee. Atty Gen. Op. 08-02 (2008). This bill would provide the legislative authority that the attorney general found lacking.

PERFORMANCE IMPLICATIONS

SLO states, “A recent transaction in which trust lands in Rio Rancho were sold to Central New Mexico Community College demonstrates the potential benefit of planning and development leases to the trust. In that transaction, a 25-acre parcel of trust land was appraised at \$375,000 before planning and development. The SLO’s profit from the sale of that 25 acre parcel after three years of planning and development under a business lease (including annexation and master planning) was \$1,475,114, or \$1,100,114 greater than the land value without planning and development. Similar results for the remaining 420 acres under that business lease would produce an additional \$18 million dollars to the trust above the value of the land without planning and development.”

ADMINISTRATIVE IMPLICATIONS

The bill would require a certain amount of rulemaking by the State Land Office.

² Excerpted from SLO response dated 2-17-09.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Several bills have been introduced regarding the commissioner’s authority to enter into leases for planning and development: SB474, SB475, SB540, HB605, HB606, HB607.

OTHER SUBSTANTIVE ISSUES

None noted by respondent.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

SLO states, “If this bill is not enacted, there may be continuing uncertainty regarding the commissioner’s authority to enter into business leases for state lands which provide compensation to the lessee for master planning and entitlements.”

AMENDMENTS

None suggested by respondent.

BW/mt:mc:svb