

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 and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

**SPONSOR** Griggs **ORIGINAL DATE** 02/04/14  
**LAST UPDATED** \_\_\_\_\_ **HB** \_\_\_\_\_

**SHORT TITLE** Study Transfer of Federal Lands to State **SM** 47

**ANALYST** Armstrong

### APPROPRIATION (dollars in thousands)

| Appropriation |      | Recurring<br>or Nonrecurring | Fund<br>Affected |
|---------------|------|------------------------------|------------------|
| FY14          | FY15 |                              |                  |
|               | TBD  |                              |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB 1, SB 256, HB 102  
 Relates to Appropriation in the General Appropriation

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

State Land Office (SLO)  
 Indian Affairs Department (IAD)  
 Administrative Office of the Courts (AOC)

#### No Response From

Energy, Minerals, and Natural Resources Department (EMNRD)

### SUMMARY

#### Synopsis of Bill

Senate Memorial 47 requests that SLO and EMNRD study the costs and benefits of assuming responsibility for all federal resource production lands within New Mexico, excluding federally reserved tribal lands. The memorial instructs SLO and EMNRD to:

- assume that New Mexico would begin managing the lands in 2016 and acquire full title to them in 2036;
- assume that New Mexico would share royalties from production on the lands with the federal government, starting at a rate of three percent with incremental and equal reductions in the royalty share every five years, until the title is transferred to the state, at which point New Mexico would retain all royalty proceeds from transferred lands;

- analyze the capacity of state agencies to assume the resulting additional management and regulation responsibilities, including any increases in staffing, equipment, office space and funding that would be required;
- project the resulting revenues that could reasonably be expected from the transferred lands and any other benefits that would accrue to the state of New Mexico; and
- analyze the liabilities that would be incurred, including police and security needs and the costs of remediation for any hazardous waste sites on the transferred lands that would fall under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, commonly known as the Superfund Act, or Clean Water Act regulations.

## **FISCAL IMPLICATIONS**

According to SLO analysis, the complexity of the work involved will require dedicated and increased resources and expertise. There are approximately 27 million acres of federal lands in New Mexico administered by the four major land management agencies and the Department of Defense. Conducting an assessment to identify which of these lands are “resource production lands,” and an assessment of the costs and benefits associated with transferring title and management responsibilities to the state with respect to any of the identified lands, would require significant resources.

While it is expected that significant resources would be needed from both agencies, SLO states that it may be precluded from using Land Maintenance funds to absorb any shortfall between the appropriated amount and what would be needed to complete the study. SLO’s budget is funded through the revenue it produces for State Land Trust beneficiaries (Land Maintenance Fund). LMF monies must be used to support efforts to benefit the Trust and its beneficiaries and it is unclear whether the study contemplated by the legislation is aimed at advancing the interests of the Trust. *See Ervien v. U.S.*, 251 U.S. 41 (1919) (holding that the Enabling Act requires use of State Trust Land revenue exclusively for Trust purposes).

## **SIGNIFICANT ISSUES**

While HM 47 requests that SLO and EMNRD to study the costs and benefits of assuming management responsibility for and title to federally owned lands, the utility of such a study is unclear. The U.S. Constitution, through the Property Clause, grants the federal government expansive authority in the management of federally owned lands. Moreover, the Enabling Act for New Mexico provides that the people of the state “...forever disclaim all right and title to the unappropriated and ungranted public lands lying within the boundaries thereof...” Thus, decisions to transfer federal lands to New Mexico lie with the federal government. Still, a legal theory exists that the state’s Enabling Act established a contractual relationship in which the federal government has not fulfilled the purported obligation that it “shall” sell public lands within the state and transfer five percent of the proceeds to the state to support public schools. It is unclear and there is a lack of precedent regarding whether the language that this theory relies upon requires sale of *all* federally owned public land in New Mexico. However, that is a very broad interpretation of a relatively small provision in the Enabling Act, especially in light of the powers granted to the federal government under the Property Clause and the deference that the judiciary has traditionally granted the federal government on such matters.

According to SLO analysis, SLO and EMNRD have an excellent working relationship but much of the necessary information to conduct a study of this nature would have to be obtained from

multiple federal agencies over which the state agencies have no jurisdiction. SLO has an ongoing cooperative relationship with federal agencies regarding a variety of land management issues, including work on proposed land exchanges that allow each party to acquire lands that serve their respective missions. Work on the requested study could complicate and disrupt SLO's cooperative relationship with those federal agencies and slow down or disrupt the completion of land exchanges that can be completed in the short term under existing law or narrowly tailored federal legislation. A transfer of all federal "resource production lands" requires federal legislation which is not pending and does not appear to be forthcoming in the near future.

## **RELATIONSHIP**

LFC's recommendation includes a special appropriation for \$200 thousand for a study to assess the feasibility of acquiring federal disposal lands for the purpose of generating revenue.

Senate Bill 1 appropriates \$250 thousand from the general fund to SLO to study whether it is feasible to acquire a portion of lands that are identified by the BLM as "disposal lands." According to SLO, this approach is consistent with existing federal law, maintains a collaborative relationship with our federal partners, is targeted at only the lands BLM has identified for disposal, and allocates sufficient resources to conduct the study.

House Bill 102 creates the transfer of public lands task force.

Senate Bill 256 appropriates \$75 thousand to SLO and EMNRD to study the costs and benefits of New Mexico assuming management responsibility for and title to federally owned "resource production lands."

## **TECHNICAL ISSUES**

The memorial does not define the term "federal production lands" which are a central focus of the study.

JA/svb