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FISCAL IMPACT REPORT

SPONSOR:	Lutz	DATE TYPED:	01/03/00	HB	454
SHORT TITLE:	Community Land Grants and Water Rights			SB	
				ANALYST:	Pickering

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY00	FY01	FY00	FY01		
		NFI			

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB272

SOURCES OF INFORMATION

Energy, Minerals and Natural Resources Department (EMNRD)

NM Department of Agriculture (NMDA)

Office of the State Engineer / Interstate Stream Commission (OSE/ISC)

SUMMARY

Synopsis of Bill

HB454 creates significant changes to the powers of the boards of trustees of community land grants. New material is added to Chapter 49, Article 1 NMSA 1978 that confers zoning authority to the boards of trustees. This would provide the authority to regulate and restrict building codes, building densities, population densities and businesses. The bill also empowers the boards to impose negative easements on lands held in common with exterior boundaries of the land grants.

The power to impose property taxes on real property within the land grant is provided pursuant to Section 7-37-7 NMSA 1978.

HB454 adds new material to Chapter 49, Article 1, that prevents water rights from being lost by prescription, adverse possession or non-use of the waters. In addition, Section 37-1-21 NMSA 1978 is repealed.

Significant Issues

OSE believes the scope of the bill is uncertain because it only applies to those community land grants that are not governed by other legislative provisions. There are a number of land grant classes that appear to be excluded from the bill such as town, colony and pueblo grants since only community grants are addressed. Additionally, the bill does not define the effect and reach of the grant's zoning authority in relation to other governmental entities such as municipalities or counties within which the grant is located.

HB454 provides powers similar to county level governments in that property taxes may be assessed and land use zoning codes can be determined. However, this relationship of a grant's taxing power to that of the county where it is located, is unclear. The bill does not state whether this authority is concurrent or exclusive. EMNRD also cited the omission of important provisions such as confidentiality required by Section 37-8-4 NMSA 1978 not being addressed. Many provisions in Section 38 NMSA 1978, entitled "Administration and Enforcement of Property Taxes" are also not addressed.

The bill exempts water rights from being lost by non-use. However, under New Mexico law, a community land grant or its heirs, have no right to the use of water within the grant by virtue of the creation of the grant alone. A community land grant, as an entity, would only have such rights to water as are appurtenant to lands owned by the grant where water has been put to beneficial use. However, HB454 implies otherwise.

FISCAL IMPLICATIONS

According OSE, the bill has the potential to create new issues in water rights adjudication. This would pertain to the rights of a land grant to water within its borders, and could lead to more complex, protracted and expensive adjudication suits.

ADMINISTRATIVE IMPLICATIONS

Significant administrative impact could result from coordinating the (apparent) concurrent zoning and taxing authority of the grant and the county.

CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP

HB454 duplicates SB272.

RWP/gm