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## FISCAL IMPACT REPORT

SPONSOR Miguel P. Garcia      DATE TYPED 02/25/05      HB 331/aHGUAC  
 SHORT TITLE Land Grant Purchase of State Lands      SB \_\_\_\_\_  
 ANALYST Ford

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
	See Narrative			

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 332

### SOURCES OF INFORMATION

LFC Files

Responses Received From

- Attorney General (AGO)
- Department of Transportation (DOT)
- Energy, Minerals and Natural Resources Department (EMNRD)
- General Services Department (GSD)
- State Land Office (SLO)

### FOR THE LAND GRANT COMMITTEE

#### SUMMARY

Synopsis of HGUAC Amendment

The House Government and Urban Affairs Committee amendment provides that the right of first refusal provisions apply notwithstanding Section 64-3-8.2 NMSA 1978, which regulates the sale of property by the Department of Transportation. The amendment corrects a typographical error. Finally, the amendment adds that the bill's provisions do not to apply to the conveyance or transfer of state highways to local government entities.

Synopsis of Original Bill

House Bill 331 requires state agencies to give community land grants the right of first refusal to purchase state property that is located within the boundaries of that community land grant, as

shown in the United States patent to the grant.

The board of trustees of the community land grant shall have 45 days to respond to the notice of sale. State trust lands are exempted from the provisions of the bill.

### Significant Issues

House Bill 331 gives the board of trustees of certain community land grants the right of first refusal to purchase property being sold by a state agency. The provisions of the bill are broad and do not specify any parameters for the right of first refusal. For example, the measure makes no requirement for price. Will the board of trustees have to pay fair market value for the property? Or could it force a state agency to sell the property for any price?

The bill specifies that the board of trustees has 45 days to respond to the notice of sale, but does not specify how long the board of trustees has to actually make the purchase. As written, the bill allows a board of trustees to indicate that it wants to exercise its right of first refusal within the 45 days, but then delay the actual purchase indefinitely. Finally, House Bill 331 makes no requirement that the board of trustees show the financial means to make the purchase or provide any kind of good-faith deposit or commitment.

In general, a right of first refusal creates a cloud on a property's title which likely lowers its value to other buyers. This could result in the state receiving a lower sale price, even when the board of trustees of the community land grant passes on the purchase. The lack of specificity in the bill with respect to price and timeframe make it even more likely that the state would receive significantly lower prices when disposing of surplus properties.

GSD raises similar concerns and further notes that it may be difficult for an agency to know if the land it wishes to sell is within a community land grant. It also notes that the bill would allow state agencies to by-pass other existing requirements such as making a written determination regarding sale of the property or explaining why the property is surplus.

The SLO raises the issue that this bill would allow the sale of state property without the approval required under existing law. Currently, sales of property valuing \$25 thousand or more require approval from the board of finance and sales valuing \$100 thousand or more require ratification from the Legislature. House Bill 331 appears to allow sales of state property at any value to a land grant community without approval from either entity. In addition, Section 13-6-2.1 NMSA 1978 specifically allows for donation of state property to an Indian nation, tribe or pueblo. It is unclear whether donation would be permitted under House Bill 331.

DOT writes that it has already begun the process of identifying those surplus properties that were once part of a community land grant and committing to dispose of those lands in the manner established by the bill. However, DOT notes that the bill does not address some issues which may be created. For example, DOT may wish to enter into a road exchange agreement with a local government which would involve a state road through community land grant lands. Although the intent of the road exchange agreement would be to leave the road in operation under control of local government, would the state be required to offer the road to the board of trustees of the community land grant first?

DOT also raises an issue regarding state law that requires the state to offer back to private indi-

viduals any surplus property within five years. Would these individuals be by-passed by the new requirements of the bill?

EMNRD notes that the bill could raise problems for the State Parks Division (SPD). SPD is required to self-generate much of its own revenue and thus could be adversely impacted if prices for surplus land were lowered because of this bill. In addition, SPD may wish to purchase land that is within a state park from another agency. If that land were within the boundaries of a community land grant, this could prevent SPD's efforts to consolidate state parks. SPD may also wish to advance other public goals by entering into agreements with other agencies.

The AGO notes that some state land has restrictions on resale, writing, "...the state has received other former land grant property from the federal government which may not have been transferred under the Enabling Act. That property may be under restriction as to its use even after disposal. (Marquez Wildlife Area, Bear Canyon Reservoir for example). Those restrictions may effectively prohibit the sale of certain property to land grant communities without having to repay the federal government. Other state property within land grants may be subject to covenants, restrictions, and reversionary rights."

### **FISCAL IMPLICATIONS**

House Bill 331 could result in revenue losses to state agencies by depressing the sale price of state surplus properties.

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

House Bill 332 will consider any bid made by the board of trustees of a community land grant-merced at a tax delinquent auction to be the highest bid at a public auction and shall entitle the board of trustees to purchase the property for the amount bid following specific conditions.

### **TECHNICAL ISSUES**

The AGO raises the following technical issue:

"The land grants referred to in this bill are those mentioned in Chapter 49 Article 1 of NMSA. Those land grants are defined as a "grant of land made by the government of Spain or by the government of Mexico to a community, town, colony or pueblo or to a person for the purpose of founding or establishing a community, town, colony or pueblo". NMSA Section 49-1-1.1B. Those land grants are political subdivisions of the state. NMSA Section 49-1-1. However, The New Mexico Supreme Court has held that those provisions do not automatically apply to legislatively created land grants. *Merrifield v. Buckner*, 41 N.M. 442, 70 P.2d 896 (1937). Although the legislature has, by statute, applied those provisions to two land grants, there may be other land grants which are not subject to the provisions of Chapter 49 Article 1, and which therefore would not be granted the right of first refusal described in this bill."

The AGO also notes that "state agency" is not defined, which may lead to difficulties in interpretation.

**EF/njw:sb**