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FISCAL IMPACT REPORT

SPONSOR Tsosie **DATE TYPED** 3/7/2005 **HB** _____

SHORT TITLE Implied Easements On Certain Public Lands **SB** 1027

ANALYST Aguilar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB 1051

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Commissioner of Public Lands (SLO)

SUMMARY

Synopsis of Bill

Senate Bill 1027 consists of legislative finding that Native Americans resided on land that is now part of the state of New Mexico and developed pathways and home sites that pre-date the ownership rights asserted by the United States and that at the time of the federal enabling act of June 20, 1910. The bill further notes no surveys documenting the traditional use or occupancy of the land by Native Americans were conducted at that time.

The bill provides that the current use of home sites and roads used since January 6, 1912 by New Mexico residents on lands conveyed to the state of New Mexico by the federal enabling act, and still owned by the state is permitted by implied easement and includes the right to improve roads and provide utilities.

Significant Issues

Senate Bill 1027 recites that Native Americans have been using trust lands for many centuries. The state land office notes when New Mexico received its grant of lands under the Enabling Act, the Commissioner was required to locate and classify all lands before the grant was confirmed by the federal government. Lands which were occupied by Native Americans or otherwise taken by settlers or other federal reservations or purposes were not available, and the state had to locate and select other lands in lieu of those already taken. The lands currently held in trust were thus already surveyed for conflicting uses and approved for trust ownership by the federal government. Any Native American use of trust lands has occurred outside the bounds of their proper reservations and is considered to be un-permitted use by the land office.

TECHNICAL ISSUES

The Attorney General's Office raises the following questions as potential technical issues to be considered by the legislature:

- Who are the persons who can claim easements?
- What constitutes a "home site" or "road" for the purposes of the bill?
- Where are the home sites and roads referred to in the bill located?
- How many home sites and roads will be affected?
- What constitutes "current use?" Permanent occupation? Occasional use?
- Can the owner of an easement cut off access by other citizens?
- Charge a fee for use of the easement?
- How would the bill affect mineral rights?

The Attorney General's Office notes that under current law a home site cannot be obtained by easement. The bill recites findings that as of the date of the 1910 enabling act, the home sites and roads it refers to were not surveyed. Among the elements needed to establish an easement are that the home site or road has been used since January 6, 1912, when New Mexico became a state. It is not clear whether what is contemplated is continuous use or whether intermittent use would suffice.

ALTERNATIVES

The State Land Office has proposed consideration to introduce a bill that would appropriate general fund to the Office of Indian Affairs to settle the outstanding Native American trespass issues. The land office notes this approach would result in a much more expeditious and final resolution to the problem.

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