

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 FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 2/26/07

SPONSOR Robinson LAST UPDATED 3/1/07 HB _____

SHORT TITLE Sue Texas for Return of Land SB 1068

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

No Responses Received From
Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

Senate Bill 1068 directs the Attorney General's Office to sue the State of Texas for the return of land. Due to an error in drawing the north-south boundary between New Mexico and Texas, 603,485 acres belong to New Mexico.

FISCAL IMPLICATIONS

This bill does not include an appropriation for support of the proposed litigation. It is possible that the litigation proposed in this bill would require additional resources, including FTE attorneys and staff.

SIGNIFICANT ISSUES

The bill seeks compensation for subsurface mineral rights, oil and gas royalties and income, property taxes and grazing privileges due to the boundary error.

The bill, according to LFC files, is based on the theory that the true border between the two states is the 103rd meridian, but the 1859 survey establishing the actual boundary set the border

three miles east. Allegedly, New Mexico's draft constitution in 1910 claimed the border should be on the 103rd meridian as intended. A Congressional investigation was convened, to which New Mexico, not yet a state was not invited, and Congress opted to leave the border in place. Allegedly Texas political forces threatened to scuttle New Mexico's bid for statehood if the dispute continued.

“In *Oklahoma v. Texas*, 272 U.S. 21 (1926), the United States Supreme Court set forth the criteria for settling border disputes between states:

“It is well settled that governments, as well as private persons, are bound by the practical line that has been recognized and adopted as their boundary, Missouri v. Iowa, 7 How. 660, 670; New Mexico v. Colorado, 267 U.S. 30, 40, 45 S. Ct. 202; and that a boundary line between two governments which has been run out, located and marked upon the earth, and afterwards recognized and acquiesced in by them for a long course of years, is conclusive, even if it be ascertained that it varies somewhat from the correct course, the line so established taking effect, in such case, as a definition of the true and ancient boundary, Virginia v. Tennessee, 148 U.S. 503, 522, 13 S. Ct. 728; Maryland v. West Virginia, 217 U.S. 1, 42, 30 S. Ct. 268; New Mexico v. Colorado, supra at page 40 (45 S. Ct. 202).”

LFC files states that if this bill passes, the Attorney General would have to determine whether such suit has merit. The Attorney General would be constrained by the New Mexico Supreme Court Rule 16-301 which prohibits bringing frivolous suits. Congressional recognition of the boundary as it exists today could be controlling. Any suit such as the one proposed in this bill would have to be brought in the United States Supreme Court.

ADMINISTRATIVE IMPLICATIONS

LFC files cite the Attorney General's analysis from 2005 that although the Attorney General may be “directed” by the Legislature to sue Texas, the Attorney General is required, as an independently elected member of the executive branch, and as an attorney, to determine the merits of any claim against Texas.

OTHER SUBSTANTIVE ISSUES

This bill implicates the Separation of Powers Doctrine contained Article III section 1 of the New Mexico Constitution. That doctrine generally prohibits one branch of government from interfering with the affairs of another.

ALTERNATIVES

The Legislature could propose a memorial requesting the Attorney General review the merits of any land claims against the State of Texas and report to the Legislature.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Legislature would not direct the Attorney General to sue the State of Texas over its boundary with New Mexico.