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FISCAL IMPACT REPORT

ORIGINAL DATE 01/24/09
 SPONSOR Bandy LAST UPDATED 02/10/09 HB 39/aHJC
 SHORT TITLE Land Grant Inclusion In Public Land Use Plans SB _____
 ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	\$0.1	\$0.1	\$0.1	\$0.1	Recurring	Various

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance & Administration (DFA)
 Department of Game & Fish (DGF)
 Energy, Minerals & Natural Resources (EMNRD)
 State Land Office (SLO)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to HB 39 clarifies that the planning process is land use planning and the process includes meetings related to land use planning.

In addition, the state agency that owns any interest in real property that is located within the boundaries of a land grant-merced shall also include the board of trustees of the land grant-merced if that land grant-merced has notified the state agency that the state agency has an interest in real property located within the boundaries of the land grant-merced.

Synopsis of Original Bill

House Bill 39 will require state agencies owning any interest in real property within a land grant-merced to include the board of trustees of the land grant in the “planning process” for use of the interest in the real property if:

- the location of the property is within the boundaries of the grant as shown in the United States patent to that land grant-merced; and

- The land grant-merced is governed as a political subdivision of the state pursuant to the provisions of Chapter 49, Article 1 NMSA 1978 or statutes specific to the named land grant-merced.

FISCAL IMPLICATIONS

Depending on the ultimate interpretation of the bill, this legislation could have either a minimal impact or it could have a significant impact on the on the affected agencies.

SIGNIFICANT ISSUES

EMNRD provided the following:

Existing state parks that are within land grants areas include: Sugarite Canyon State Park, Storrie Lake State Park, Villanueva State Park, Eagle Nest Lake State Park, Coyote Creek State Park, Manzano Mountains State Park, Vietnam Veterans Memorial State Park and Cimarron Canyon State Park.

The most significant issues identified with the bill is the nebulous nature of the terms “include” and “planning process,” i.e. what type of state agency action would be captured in the mandate to include land grants in the planning process and how exactly should that coordination take place. Depending on the implementation of this particular language, planning can be defined as including activities all the way down to the level of daily maintenance, as many of these activities area identified in operational plans for parks and facilities. If the “planning process” term is implemented as more of a management planning function, all state park management plans currently undergo an open, inclusive public process that invites public involvement and comment, including those from land grants. It is unclear from the bill whether land grants would have to be given any “special consideration” or “special role” in the planning process above and beyond that of other entities.

Depending on the implementation of the bill’s language, planning and projects at state parks within land grants could be slowed tremendously, depending on the specific level of involvement of the land grant board of trustees and its responsiveness. In some theoretical cases, there may be a direct conflict between the planning desires of the agency and the board of trustees. It is unknown what the remedy would be in these cases.

SLO states that it is not presently known if land-grant patents conflict with or overlap lands granted to the state in trust by Congress in the New Mexico Enabling Act. Due to the inadequacy of many early surveys and the not uncommon occurrence of scribes and other errors in federal patents, there is some potential for such issues to arise. The result for the State Land Office would be the possible diminishment of its ability to maximize revenues from state trust land planning. This impact is speculative and not quantifiable.

SLO believes one of the reasons Congress enacted the Ferguson Act of 1898 when the Territory of New Mexico first received lands in trust for the support of its public schools and other civil institutions, was that most of the land grant claims had been settled, and good lands were back in the public domain. Since then, however, other or additional land grant claims have continued to be raised, and they constitute a cloud on the title of the lands claimed. The Ferguson Act grants were extended and confirmed by the New Mexico Enabling Act. Although this potential for conflict is minimal, it cannot be entirely discounted.

ADMINISTRATIVE IMPLICATIONS

Impact to state agencies would be increased workload and costs associated to develop guidelines.

OTHER SUBSTANTIVE ISSUES

During the period of Spanish rule over the American Southwest, various monarchs of Spain would create land grants to reward their subjects for the purpose of creating common land for settlers. New Mexico has a long and rich history of boundary disputes between the federal government and land grant owners. There are even boundary disputes among land grant owners. It is a very complicated issue and may present legal problems for state agencies in the future. It is important to remember that common land is land under the authority of the board of trustees and is owned by all land grant heirs.

POSSIBLE QUESTIONS

DFA note that the language of the bill is vague regarding participation of the board of trustees of the land grant in the planning process. Are they allowed to vote? Do they have veto power? Should the state agency contact the land grants owners before selling property within the land grant boundaries? What does the bill mean by “participate”? What guidelines should the agencies follow?

DW/mt:svb