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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 01/26/14  
**LAST UPDATED** 01/28/14    **HB** 102

**SPONSOR**    Herrell

**SHORT TITLE**    Transfer of Public Lands Taskforce    **SB** \_\_\_\_\_

**ANALYST**    Weber

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$250.0	\$250.0	\$500.0	Nonrecurring	General

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates, Relates to, SB 1

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Office of the Attorney General (AGO)  
 Department of Game and Fish (DGF)  
 Energy, Minerals and natural Resources Department (EMNRD)  
 State Land Office (SLO)  
 Department of Indian Affairs (IAD)

### SUMMARY

#### Synopsis of Bill

House Bill 102 creates the transfer of public lands task force.

The following constitute the task force members:

- Four members of the legislature: one appointed by the Speaker of the House of Representatives; one appointed by the minority floor leader of the House of Representatives; one appointed by the President Pro Tempore of the Senate; and one appointed by the minority floor leader of the Senate;
- The Commissioner of Public Lands or the commissioner’s designee;
- The Secretary of Indian Affairs or the secretary’s designee; and
- Three members appointed by the Governor.

The first meeting shall be held on or before July 1, 2014. They will meet regularly and report annually to the legislature updating on progress the task force has made concerning facilitating the transfer of public lands to the state. The task force shall report at least one time during the interim to the legislative finance committee and to any interim committee created by the New Mexico legislative council to consider Native American affairs, land grant issues, water and natural resources or economic and rural development. The task force shall take testimony from representatives of groups, including environmental organizations, farmers, hunting and fishing organizations, ranchers and outdoor sporting organizations, before proposing any legislation.

During the 2014 and 2015 interims, the task force shall study and determine whether to prepare proposed legislation to be introduced in the second session of the fifty-second legislature in 2016 regarding:

- 1) The transfer of federal lands to the state;
- 2) The transfer of state and federal lands to the Indian nations, tribes and pueblos of the state;
- 3) The transfer of state and federal lands to the state's land grants; and
- 4) Possible land exchanges between the state and the federal government.

For purposes of conducting the study the task force shall consider the following.

- 1) Opportunities for improved wildlife management;
- 2) Opportunities for transferring title of culturally or spiritually significant lands to the Indian nations, tribes and pueblos of the state;
- 3) Opportunities for transferring title of culturally or spiritually significant lands to the state's land grants;
- 4) Opportunities to address problems concerning land access; and
- 5) Opportunities for cost savings to the state or to the federal government.

The Secretary of Indian Affairs shall consult with representatives of the Indian nations, tribes, and pueblos to determine if any federal lands should be excluded from the transfer from federal control and report their views to task force.

Nothing in this bill shall be interpreted as prejudice or adversely affecting any rights, claims or privileges of New Mexico's historic land grants. Section 1 and Section 2 of this act are repealed effective July 1, 2017.

## **FISCAL IMPLICATIONS**

The bill directs the Legislative Council Service and SLO to provide staff for the task force.

SLO raises the concern that to provide the professional, in-depth analysis that would be required for such a complicated investigation the operating budget impact would be indeterminate but potentially significant, but no funding is appropriated. Just one FTE to provide coordination, could easily have an impact in excess of \$100,000/year for two years. It is likely experts and technical staff needed to complete the studies would increase costs much more.

The State Land Office's budget is funded through the revenue it produces for State Land Trust beneficiaries (Land Maintenance Fund). The legislation apparently assumes that the State Land Office is able to use money from the Land Maintenance Fund (LMF) to support general task

force activities. LMF monies may only be used to support efforts to benefit the Trust and its beneficiaries, which some of the items to be considered by the task force appear to be outside of this realm. *See Ervien v. U.S.*, 251 U.S. 41 (1919) (holding that Enabling Act requires use of State Trust Land revenue exclusively for trust purposes).

The task force is also charged with assessing the possible transfer of state lands to the “state’s land grants” and “Indian nations, tribes and pueblos of the state.” Should a transfer include State Trust Lands, it could have an adverse impact on the ability of the State Land Office to generate revenue for public institutions.

IAD notes in a similar vein that it would be reasonable to assume a cost of \$100 thousand annually for the cost of hiring a new employee or contracting to complete the required consultation with the tribes.

The bill does not comment on per diem and mileage reimbursements but it must be assumed these costs would also be incurred for the members to attend meeting.

### **SIGNIFICANT ISSUES**

The SLO notes that the Commissioner of Public Lands strongly opposes the liquidation of federal lands. Furthermore, the SLO has significant concerns regarding the potential transfer of State Trust Lands to other entities, such as tribes and land grants, in any manner that adversely impacts the value of the Trust.

EMNRD contributes that while not directly involved with the Task Force, the Task Force recommendations could directly impact the agency. For instance, State Parks are primarily housed on land that is either state owned or leased by the state from different federal agencies. These lands could be the subject of recommendations from the Task Force. State Forestry works to coordinate responses to fires on federal, state and private land. Changes in land ownership will impact fire responses and the funding of fire resources.

### **TECHNICAL ISSUES**

AGO details the following concerns that could cause confusion

HB 102, Section F mandates the Task Force take testimony from certain representatives. However, HB 102 is unclear whether representatives from interest groups or individuals outside of those listed in Section F would be allowed to offer testimony to the Task Force. Incorporating the language “including but not limited to” may remedy this potential legal issue.

As a public body, the Task Force will be subject to both the Open Meetings Act, NMSA 1978, Sections 10-15-1 through -4 (“OMA”), and Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 through -12 (“IPRA”). HB 102 does not provide how and where it would give public notice of its meetings, which is complicated by HB 102’s requirement that both the Legislative Council Service (“LCS”) and the State Land Office “provide staff for the task force.” There is a likelihood that the Task Force may inadvertently violate OMA and/or IPRA. Defining the scope of duties that the LCS and State Land Office have may help remedy this issue.