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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 02/04/15  
**SPONSOR** Steinborn **LAST UPDATED** \_\_\_\_\_ **HB** 154

**SHORT TITLE** Local Government Review of Business Leases **SB** \_\_\_\_\_

**ANALYST** Daly

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
	(Indeterminate)	(Indeterminate)	Recurring	Land Maintenance Fund

(Parenthesis ( ) Indicate Revenue Decreases)

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

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Indeterminate	Indeterminate	Indeterminate	Recurring	Land Maintenance Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

State Land Office (SLO)  
 Attorney General's Office (AGO)  
 Economic Development Department (EDD)

### SUMMARY

#### Synopsis of Bill

House Bill 154 requires all proposed SLO leases for real estate planning and development (P&D leases) be reviewed by:

- the governing body of each municipality whose planning and platting jurisdiction boundary is within 20 miles of any of the land to be included in the proposed lease;

and

- the board of county commissioners of each county in which any land in the proposed lease, outside the planning and platting jurisdiction of a municipality, is situated.

After receiving a copy of the proposed P&D lease from SLO, the municipality and/or county must:

- publish notice of the proposed lease;
- conduct a public hearing to solicit views regarding the proposed lease; and
- issue a decision “as to whether or not the proposed lease is in the best interests of the municipality or county.” The municipality and/or county may also make “recommendations to the commissioner and the proposed lessee on specific revisions to the lease that would make it more advantageous to the municipality or county.”

If the municipality and/or county fail to conduct a public hearing within 90 days after receiving a proposed P&D lease, the Commissioner is authorized to issue the lease without the review otherwise required.

## **FISCAL IMPLICATIONS**

As to revenue, as reflected in the first table above, SLO reports HB 154 would have a negative fiscal impact on its ability to generate revenue to the extent that applicants/developers will see Trust Lands as less desirable due to the additional reviews. Further, the Commissioner will be unable to pursue specific projects/leases due to an unfavorable review by a local government. Neither of these factors can be measured at this time.

As to budget impact, SLO anticipates the additional administrative requirements will adversely impact its budget, as it will require significant staff time and resources to prepare for and attend local public body hearings, in addition to analyzing resulting decisions or recommendations, which impact is similarly unquantifiable at this time.

## **SIGNIFICANT ISSUES**

The intent of HB 154 is unclear: is the Commissioner prohibited from issuing a P & D lease if a municipality or a county determines that the lease is not in the best interests of that local public body? Or is it intended to provide a mechanism by which local residents and their governing bodies can learn about and have input into the leasing process? If a negative determination is intended to prohibit the issuance of the lease, SLO advises that a constitutional issue is raised:

Under the New Mexico Constitution, the commissioner of public lands is responsible for “the direction, control, care and disposition of all public lands, under the provisions of the acts of congress relating thereto and such regulations as may be provided by law,” N.M. Const. art. XIII, § 2. The state is required to use the state trust lands “exclusively . . . for the purposes for which they were granted” by Congress, N.M. Const. art. XII, § 12; *i.e.*, to provide support for the beneficiary institutions. *See State ex rel. King v. Lyons*, 2011-NMSC-004, ¶ 92, 149 N.M. 330, 248 P.3d 878 (Chavez, J., dissenting) (“The Commissioner is a trustee of public lands with fiduciary responsibilities to preserve, protect, and manage trust lands so as to make the lands productive for the benefit of the trust beneficiaries to whom he owes an undivided loyalty.”). The bill could be construed

as violating the Constitution by giving municipalities and counties control over certain state trust land leasing to be exercised for purposes other than those specified by the New Mexico Enabling Act and Constitution.

Further, SLO reports:

At present, municipalities and counties do not have authority to enforce zoning or other restrictions on state trust lands. *See generally City of Santa Fe v. Armijo*, 1981-NMSC-102, 96 N.M. 663, 634 P.2d 685; *but see* NMSA 1978, §§ 19-10-4.1 through 19-10-4.3 (statutory SLO oil and gas lease forms requiring, at the discretion of the commissioner, that the lessee comply with city, county, state, and federal laws and regulations). Under this bill, certain state trust land leases providing an opportunity for substantial benefit to the trust and its beneficiaries could be obstructed by local authorities who, unlike the commissioner, are not obligated to serve the best interests of the trust, for the express purpose of serving the best interests of the municipality or county, however that might be defined. This could have negative consequences for the trust, which are difficult to quantify.

In addition, SLO points out the bill does not set forth any criteria to be used by the municipality or county to determine whether issuance of the SLO P&D lease would be in the best interests of the municipality or county. By way of comparison, municipal and county zoning authority must be exercised “[f]or the purpose of promoting health, safety, morals or the general welfare,” and the zoning authority is restricted to regulation of matters such as (1) the height, number of stories and size of buildings and other structures; (2) percentage of a lot that may be occupied; (3) size of yards, courts and other open space; (4) density of population; and (5) location and use of buildings, structures and land for trade, industry, residence or other purposes. See Section § 3-21-1, NMSA 1978. Nor does it provide for judicial review of a county or municipal decision.

HB 154 also seems to require duplicative municipal and county processes where the state trust land in question is located outside but within 20 miles of a municipal planning and platting jurisdiction boundary.

### **ADMINISTRATIVE IMPLICATIONS**

SLO reports that competitive bidding is required already for all SLO P&D leases, and that the bill would impose significant additional administrative burdens on it with respect to the issuance of P&D leases because it would have to prepare for and attend local hearings.

### **OTHER SUBSTANTIVE ISSUES**

SLO calls attention to existing joint planning agreements with certain municipalities and counties under which it confers with local authorities regarding SLO leasing decisions, and comments that the bill would replace that voluntary, cooperative process with a mandatory, potentially adversarial process.

MD/bb/je