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FISCAL IMPACT REPORT

SPONSOR McCamley/Trujillo L/ Trujillo CH **ORIGINAL DATE** 2/1/18 **LAST UPDATED** _____ **HB** 138

SHORT TITLE No State Land for Border Wall **SB** _____

ANALYST Sánchez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20		
		Indeterminate but decrease see Fiscal Implications		Other State Funds

(Parenthesis () Indicate Revenue Decreases)

Relates HM52

SOURCES OF INFORMATION

LFC Files

Responses Received From
State Land Office (SLO)

SUMMARY

Synopsis of Bill

House Bill 138 proposes to prohibit real property owned or held in trust by the state of New Mexico to be used for a wall separating the United States and Mexico. The specific border area is New Mexico and the Mexican states of Sonora and Chihuahua. State-owned or state trust land cannot be used, sold, leased, eased, transferred or otherwise disposed for the purpose of separating the two countries. The bill however does allow the construction of a barrier to prevent the movement of livestock.

FISCAL IMPLICATIONS

The State Land Office (SLO) has not estimated the condemnation value of the land abutting the Mexican border and the federal government has not yet contacted the agency to acquire an easement or other authorization to construct a barrier so the fiscal impact to the state is unknown but could be a decrease if the United States exercises its right of eminent domain.

A recent study of border land condemnations under the 2006 Secure Fence Act found that many landowners received inadequate compensation and that the condemnation process was flawed in other ways. See T.C. Miller (ProPublica), K. Collier & J. Aguilar (Texas Tribune), “The Taking: The federal government’s boldest land grab in a generation produced the first border wall – and a trail of abuse, mistakes and unfairness,” <https://features.propublica.org/ eminent-domain-and-the-wall/the-taking-texas-government-property-seizure/> (Dec. 14, 2017); Ilya Somin, “How Using Eminent Domain to Seize Land for a Border Wall Harms American Property Owners,” <http://reason.com/volokh/2017/12/14/how-using-eminent-domain-to-seize-land-f/>.

To the extent that SLO has an opportunity to generate revenue from granting an easement or lease or completing a land sale or exchange for construction of a barrier on terms more favorable than it would receive in a condemnation proceeding, the SLO estimates that the bill would have a negative effect on State Land Office revenues.

SIGNIFICANT ISSUES

SLO points out that the federal government has eminent domain authority, which the state has no power to regulate and cites the following cases: *United States v. Alcorn*, 80 F.2d 487, 489 (9th Cir. 1935); *United States v. Certain Parcels of Land in Peoria County, Ill.*, 209 F. Supp. 483, 486 (S.D. Ill. 1962), *aff’d*, 314 F.2d 825 (7th Cir. 1963); *United States v. Certain Parcels of Land in Williams County, N.D.*, 178 F. Supp. 313, 318 (D.N.D. 1959).

SLO opines that the only effect of the proposed legislation is to restrict state agencies from engaging in bilateral negotiations that might provide more favorable terms than federal condemnation proceedings.

OTHER SUBSTANTIVE ISSUES

Three sections of state trust lands abut the United States-Mexico border, and thus the bill affects only three square miles of the border. Those sections were acquired under the territorial-era Ferguson Act, prior to the 1907 Roosevelt Proclamation, which reserved to the U.S. a 60-foot buffer along the border. The 60-foot buffer was thus excluded from trust lands subsequently granted in the border area.

The three sections already have a barrier along the United States-Mexico border, so it is not clear that the federal government will seek any further rights from SLO to construct a barrier. Additionally, the United States would be able to acquire an easement or other interest by eminent domain if it needed additional rights from SLO, so this bill would not prevent the building of a wall. Moreover, if the United States government exercises its right of eminent domain, the compensation to the state would be determined in a judicial condemnation proceeding.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HM52 Border Wall Environmental Impact

ABS/sb