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FISCAL IMPACT REPORT

SPONSOR Papen ORIGINAL DATE 2/16/19
 LAST UPDATED 3/11/19 HB _____

SHORT TITLE Mesilla Valley Bosque Park Land Transfer SB 533/aHF1#1/ec

ANALYST Edwards/Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$17.0	\$51.0	\$51.0	\$119.0	Recurring	General Fund and Other State Funds

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

State Land Office (SLO)

Department of Game and Fish (DGF)

Energy, Minerals and Natural Resources Department (EMNRD)

New Mexico Attorney General (NMAG)

State Land Office (SLO)

SUMMARY

Synopsis of HF1#1 Amendment

House Floor Amendment #1 to Senate Bill 533 removes the \$70 thousand appropriation from the bill.

Synopsis of Original Bill

Senate Bill 533 transfers the lands and buildings of the Mesilla Valley State Park to the state parks division, correcting an improper quitclaim transfer done without legislative approval in June 2018. The bill would reestablish the park as it existed previous to the quitclaim action. The bill creates an appropriation of \$70 thousand from the general fund for the reestablishment and operation of the Mesilla Valley State Park.

The bill contains an emergency clause.

FISCAL IMPLICATIONS

House Floor Amendment #1 to Senate Bill 533 removes the \$70 thousand appropriation from the bill. Assuming it costs about \$70 thousand to operate and maintain the park (the amount originally appropriated for FY20 in this bill) and revenues are \$19 thousand per year, the additional budget impact on EMNRD starting in FY20 could be up to \$51 thousand per year. Assuming this bill, if sent to the governor, is signed in March, costs to EMNRD not covered by revenue generated could be about \$17 thousand in FY19.

The appropriation of \$70 thousand contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY20 shall revert to the general fund.

EMNRD explains Senate Bill 533 creates an appropriation of \$70 thousand to the State Parks Division for FY20 to reestablish and operate Mesilla Valley Bosque State Park (MVBSP). If MVBSP is reestablished, EMNRD will be able to collect fees again. Based on prior years' collections, the revenue for MVBSP is estimated to be approximately \$19 thousand annually through fee collections and facility rentals.

Assuming it costs about \$70 thousand to operate and maintain the park (the amount appropriated for FY20) and revenues are \$19 thousand per year, the additional budget impact on EMNRD starting in FY21 (if the \$70 thousand appropriation is only made in FY20 and not included in future year operating budgets) could be up to \$51 thousand per year.

The House Appropriation and Finance Committee Substitute for House Bill 2 currently includes a general fund increase of \$510 thousand and five additional FTE for state parks operations.

SIGNIFICANT ISSUES

NMAG submits the following analysis:

While the bill references a need for the legislature to approve the land transfer, it is unclear whether this is a correct interpretation of the current law. 1978 NMSA § 13.6.3 (B) appears to exempt the State land office from requiring legislative approval for this land transfer. There is a caveat related to state park land, see 1978 NMSA § 16-2-5, but there is still no clear requirement for legislative approval.

Relevant law:

1978 NMSA § 13-6-3. Sale, trade or lease of real property by state agencies; approval of legislature; exceptions.

A. Any sale, trade or lease for a period exceeding twenty-five years in duration of real property belonging to any state agency, which sale, trade or lease shall be for a consideration of one hundred thousand dollars (\$100,000) or more, shall be subject to the ratification and approval of the state legislature prior to the sale, trade or lease becoming effective. The provision specified in Section 13-6-2 NMSA 1978 requiring approval of the state budget division of the department of finance and administration as a prerequisite to consummating such sales or dispositions of realty shall not be applicable in instances wherein the

consideration for the sale, trade or lease shall be for a consideration of one hundred thousand dollars (\$100,000) or more and wherein a state agency not specifically excepted by Subsection B of this section is a contracting party, and, in every such instance, the legislature shall specify its approval prior to the sale, trade or lease becoming effective.

B. The provisions of this section shall not be applicable as to those institutions specifically enumerated in Article 12, Section 11 of the constitution of New Mexico, the state land office, the state transportation commission or the economic development department when disposing of property acquired pursuant to the Statewide Economic Development Finance Act [Chapter 6, Article 25 NMSA 1978].

1978 NMSA § 16-2-15. Secretary's power to authorize transfer of park lands. The secretary has the right to authorize the commissioner of public lands to quitclaim to any state educational institution or other state agency, department or public body having authority to hold, and a use therefor, any lands acquired for state park or state recreational purposes for such nominal consideration and upon such conditions and subject to such reservations as in each case may be prescribed by the secretary; provided, however, that disposition of any such lands shall, in any case, relate only to lands held in excess of the reasonable needs of the state park and recreation division [state parks division] of the energy, minerals and natural resources department for public parks and recreational purposes.

1978 NMSA § 16-2-16. Procedure for transfer of park lands or recreational areas to state agencies, institutions or public bodies. Upon receipt of written notification from the secretary containing a recommendation for transfer to a named grantee, a recitation of the nominal consideration and such reservations and conditions of transfer of specifically described lands as may be required, the commissioner of public lands, in conformity with the notification, shall execute and deliver to the named state educational institution or other state governmental agency, as grantee, a good and sufficient quitclaim deed conveying all the right, title and interest of the state in and to the lands described in the notification. The commissioner of public lands shall, in due course, transfer any receipts derived as consideration actually paid in the transaction to the state treasurer for credit to the proper fund.

SLO explains:

In June of 2018, pursuant to a request by the secretary of the energy, minerals and natural resources department (EMNRD) pursuant to Section 16-2-15 NMSA 1978, then-commissioner of public lands Aubrey Dunn executed a quitclaim deed purporting to convey certain lands within the Mesilla Valley Bosque state park to the state game commission. In July of 2018, the legislative council commenced a lawsuit in the first judicial district court challenging the validity of the quitclaim deed and seeking a judgment declaring the quitclaim deed to be void, directing return of custody and control of the property to the state parks division for purposes of restoring and maintaining the state park, and injunction preventing the department of game and fish from controlling or managing the park, including making alteration to the land or buildings. EMNRD filed a motion to dismiss the complaint, which has not been heard and is not presently set for hearing. Then-commissioner Dunn filed an answer to the complaint disputing some aspects of the claims but otherwise taking no position. Commissioner Garcia Richard is in the process of evaluating the case.

If the bill passes and is signed, it should moot the lawsuit and restore the land to the custody and control of the state parks division, without further action by the commissioner. To the extent that any action is required, the commissioner intends to comply with legislature's directive.

ENMRD states "Senate Bill 533 would allow for the re-establishment of Mesilla Valley Bosque State Park (MVBSP), which is supported by the local community. With the return of property and the appropriation of \$70 thousand, the State Parks Division would be able to resume full operations at MVBSP. MVBSP had ceased to function as a State Park when, on June 18, 2018, the Commissioner of Public Lands transferred the 13.39 acre parcel to the Game Commission on behalf of EMNRD State Parks Division.

Since the transfer of the MVBSP property to the Commission, the State Parks Division has continued to keep the property open to the public and has funded one FTE, who has maintained the basic functions of the facilities. Re-establishment of MVBSP will allow for increased programming, partnership, and resource protection, as well as fee collection and revenue generation at the property."

TE/sb/gb