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## FISCAL IMPACT REPORT

SPONSOR: Jennings DATE TYPED: 03/1/03 HB \_\_\_\_\_

SHORT TITLE: Obtain Title to Public Lands in NM SB 590/aSFC

ANALYST: Valenzuela

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
		See Fiscal Implications			

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
		\$250,000.0	Recurring	Permanent Fund
		See Narrative		

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

Office of the Attorney General  
 Department of Game and Fish  
 Energy, Minerals and Natural Resources Department  
 State Land Office  
 Department of Agriculture

### SUMMARY

#### Synopsis of SFC Amendment

The Senate Finance Committee Amendment to Senate Bill 590 deletes the \$250.0 appropriation from the general fund for the preparation and filing of the lawsuit. (Senate Bill 655 includes \$100.0 for this lawsuit.)

Synopsis of Original Bill

Senate Bill 590 appropriates \$250.0 from the general fund to State Land Office for the purpose of preparing and filing an action in the U.S. Supreme Court against the U.S. Department of Interior and the U.S. Department of Agriculture to gain title to those public lands in New Mexico managed by these agencies. The bill allows the Commissioner of Public Lands to enter into contracts for legal services without review or approval by the Office of the Attorney General. The bill carries an emergency clause.

Significant Issues

Federal government land ownership represents 34.1 percent (approximately 26.5 million acres) in New Mexico, whereas the State Land Office represents 11.6 percent. A key provision of SB 590 is that those lands transferred to the State of New Mexico would be managed in a manner similar to state trust lands. State trust lands are managed to maximize revenue for its beneficiary institutions (e.g., public schools and universities). Recreation is not a primary use of state trust lands. However, the federally-owned acreage represents wilderness, cultural and historic areas where recreation is primary.

SB 590 mandates a lawsuit against the United States carried out by the Commissioner of Public Lands. According to the Attorney General, Section 8-5-2 NMSA 1978 vests with the Attorney General authority to prosecute all actions in which the state of New Mexico may be a party. This significant issue will likely be challenged. A similar issue was brought before the state Supreme Court regarding the legal authority of the Attorney General versus the Natural Resources Trustee in seeking settlements with polluters for natural resource damages. The Supreme Court wrote, "The Attorney General has plenary power and authority to manage and control all litigation implicating the State and its officials . . ."

The lawsuit contemplated by SB 590 would confront several constitutional questions, as discussed in the findings section. The theory is that the State was to have been admitted to the union on an "equal footing" with other states, including the thirteen original states, where the federal government did not retain title to lands and that the Tenth Amendment to the U.S. Constitution, which provides that the states or the people reserve all powers not delegated to the United States by the constitution nor prohibited by it to the states.

**FISCAL IMPLICATIONS**

The appropriation of \$250.0 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2005 shall revert to the general fund. SLO would likely be involved in such a lawsuit for several years and would require an appropriation each year.

The true economic impact of a transfer like that proposed in SB 590 is not a simple matter. The lawsuit presumably, through due diligence, would begin to develop a better understanding of the actual revenue and expenditure impact facing New Mexico from such a transfer. The findings section of the bill states a \$250 million revenue increase, annually, to the state, after taking title to such lands.

Several economic impact studies<sup>1</sup> have been completed by the New Mexico State University Range Improvement Task Force on this topic. The most recent study confirms that the revenue generated would be well more than \$250 million, which would be generated from oil and natural gas royalties, timber and mineral royalties and other associated revenues. If select isolated properties were sold, the state would enjoy an even greater non-recurring revenue impact of \$230 million.

The study, however, does not address several items relating to the responsibility the state would take with ownership of the land. Multiple state agencies would be impacted: the Department of Environment, who regulates air, ground- and surface water; the Office of the Natural Resources Trustee who is tasked with seeking recovery of damages from environmental degradation; the EMNRD Forestry Division who regulates the timber industry and is responsible for forest health management; the EMNRD Oil Conservation Division, who is responsible for regulating the oil and natural gas industry for several issues including groundwater protection; and the Department of Game and Fish, which is tasked with wildlife management and habitat improvement. This list only represents a few of these impacted agencies or responsibilities. If enacted, the lawsuit presumably would better define these new responsibilities for the state to fund.

Overall, the NMSU study concludes that the overall benefits outweigh the cost that would be incurred.

### **POSSIBLE QUESTIONS**

Have any other western states pursued a lawsuit similar to that proposed? If so, what was the outcome?

Would any revenue sources received by the state from the federal government be in jeopardy? For instance, federal funding for state highway development?

**MFV/sb**

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<sup>1</sup> Draft Report, 2002, NMSU Range Improvement Task Force, *Economic Benefits and Costs of Transferring BLM and U.S. Forest Service Administered Lands to the State of New Mexico*.

NMSU Range Task Force, 1998 *Study on the Transfer of BLM land to State*.

NMSU Range Task Force, 1996, *The Fiscal and Economic Impact of Transferring BLM land to State*.