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FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/11
LAST UPDATED 03/12/11 **HB** 81/aSJC

SPONSOR García, M.P.

SHORT TITLE No Land Grants as State Land **SB** _____

ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

Department of Finance and Administration (DFA)

Energy, Minerals and Natural Resources Department (ENMRD)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to House Bill 81 adds a new section amending Section 49-1-3 NMSA 1978 to give a land grant-merced the authority to enter into memoranda of understanding, contracts or other agreements with a local, state or federal government or a government of a federally recognized Indian nation, tribe or pueblo, including but not limited to agreements concerning the protection and maintenance of cultural resources.

Synopsis of Original Bill

House Bill 81 proposes to amend Section 49-1-11.1 NMSA 1978 by adding a new subsection which would exempt the common lands owned or controlled by a land grant-merced from consideration or treatment as state land.

The bill contains an emergency clause.

FISCAL IMPLICATIONS

House Bill 81 carries no appropriation.

SIGNIFICANT ISSUES

The AOC provided some background information.

In 2004, land grants-mercedes were granted political subdivision status. This did not change the status of the private property ownership of the common land grant property, so the issue of whether a political subdivision can be treated as private land instead of state land may still exist. For example, under Section 18-6-3 (Cultural Properties Act), “State Land” is defined as property owned, controlled or operated by a department, agency, institution or political subdivision of the state. Stated another way, House Bill 81 may raise a question as to whether land grants-mercedes can realize certain benefits of political subdivision status without incurring obligations that apply to most state lands, such as complying with the requirements of the Cultural Properties Act or the Cultural Properties Protection Act.

The clarifying language in House Bill 81 was originally proposed after the 2009 designation of 19,000 acres of common lands within the Cebolleta Land Grant as a Traditional Cultural Property pursuant to the Cultural Properties Act. As a result of this designation, the Cultural Properties Review Committee must review and approve projects or activities planned within the designated land grant-merced common lands. The proposed language in House Bill 81 distinguishes land grant-merced common lands from other state lands and signifies that laws such as the Cultural Properties Act do not apply to land grant common lands.

A lawsuit was filed in the Fifth Judicial District Court regarding the decision of the Cultural Property Review Committee to designate Mount Taylor as a traditional cultural property. Case No. CV-2009-812, Rayellen Resource Inc. et al. v. New Mexico Cultural Properties Review Commission, et al. In its decision date February 4, 2011, the Fifth Judicial District court in Lovington, NM, found that the CPRC exceeded its authority by designating Cebolleta’s common land as state land and therefore a “contributing property.” The court found that the listing of thousands of acres of Cebolleta’s private common land as “contributing property” is contrary to law and should be reversed.

At the September 14, 2010 joint meeting of the Indian Affairs Committee and the Land Grant Committee, certain Indian tribes and pueblos expressed concern that if there is no requirement that land grants-mercedes assess the impacts of potential projects on local cultural resources, cultural resources may be jeopardized. Because there are large deposits of uranium in the Mt. Taylor area and mining activity is becoming likely, the tribes originally sought to protect cultural properties there through the Cultural Properties Act, the Cultural Properties Protection Act and the New Mexico Prehistoric and Historic Sites Protection Act.

Lawrence T. Morgan, speaker, Navajo Nation Council, said that there are common issues facing both land grant and Native American communities, including the protection of traditional and cultural properties. The designation of political subdivision creates advantages such as recognition as a governmental entity, the ability to procure state money and infrastructure and the ability to be granted lands and other property from the state without violating the anti-donation clause. It also creates obligations, he said, such as reporting requirements for funds and budgets, spending requirements for capital improvement funds and compliance with other state laws governing political subdivisions.

At the joint meeting tribal representatives expressed concerns about the implications of land grants being treated differently from other political subdivisions and that this would directly affect the State-Tribal Collaboration Act, which applies to political subdivisions and requires tribal consultation and collaboration. They also expressed concern that this collaboration will be greatly reduced and may have a negative impact on their cultural lands. The State-Tribal Collaboration Act also has a requirement that a subdivision of the state notify tribes about any impact on cultural resources. Zuni Pueblo who has tribal interests in the Mount Taylor area and who also participated in the designation of Mount Taylor as a traditional cultural property had several concerns including pending litigation, the designation of Mount Taylor as a traditional cultural property and the unique status of tribes as sovereign entities with a government-to-government relationship with state and federal entities.

JCH/bym:svb