

1 SENATE BILL 459

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Michael Padilla

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10 AN ACT

11 RELATING TO PROPERTY TAX; CREATING A SPECIAL METHOD OF
12 VALUATION FOR LAND WITH A RESTRICTIVE COVENANT THAT REQUIRES
13 THE LAND TO BE USED PRIMARILY AS OPEN SPACE LAND.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 7-36-15 NMSA 1978 (being Laws 1975,
17 Chapter 165, Section 2, as amended) is amended to read:

18 "7-36-15. METHODS OF VALUATION FOR PROPERTY TAXATION
19 PURPOSES--GENERAL PROVISIONS.--

20 A. Property subject to valuation for property
21 taxation purposes under this article of the Property Tax Code
22 shall be valued by the methods required by this article of the
23 Property Tax Code whether the determination of value is made by
24 the department or the county assessor. The same or similar
25 methods of valuation shall be used for valuation of the same or

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1 similar kinds of property for property taxation purposes.

2 B. Unless a method or methods of valuation are
3 authorized in Sections 7-36-20 through 7-36-33 NMSA 1978 and
4 Section 2 of this 2017 act, the value of property for property
5 taxation purposes shall be its market value as determined by
6 application of the sales of comparable property, income or cost
7 methods of valuation or any combination of these methods. In
8 using any of the methods of valuation authorized by this
9 subsection, the valuation authority:

10 (1) shall apply generally accepted appraisal
11 techniques; and

12 (2) in determining the market value of
13 residential housing, shall consider any decrease in the value
14 that would be realized by the owner in a sale of the property
15 because of the effects of any affordable housing subsidy,
16 covenant or encumbrance imposed pursuant to a federal, state or
17 local affordable housing program that restricts the future use
18 of the property or the resale price of the property or would
19 otherwise prohibit the owner from fully [~~benefitting~~]
20 benefiting from any enhanced value of the property. As used in
21 this paragraph:

22 (a) "subsidy, covenant or encumbrance
23 imposed pursuant to a federal, state or local affordable
24 housing program" includes those imposed by a nonprofit entity
25 approved by a governmental entity as a qualifying grantee

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1 pursuant to the Affordable Housing Act; and

2 (b) "residential housing" means any
3 building, structure or portion thereof that is primarily
4 occupied, or designed or intended primarily for occupancy, as a
5 residence by one or more households and any real property that
6 is offered for sale or lease for the construction or location
7 thereon of such a building, structure or portion thereof.

8 "Residential housing" includes congregate housing, manufactured
9 homes, housing intended to provide or providing transitional or
10 temporary housing for homeless persons and common health care,
11 kitchen, dining, recreational and other facilities primarily
12 for use by residents of a residential housing project.

13 C. Dams, reservoirs, tanks, canals, irrigation
14 wells, installed irrigation pumps, stock-watering wells and
15 pumps, similar structures and equipment used for irrigation or
16 stock-watering purposes, water rights and private roads shall
17 not be valued separately from the land they serve. The
18 foregoing improvements and rights shall be considered as
19 appurtenances to the land they serve, and their value shall be
20 included in the determination of value of the land.

21 D. The department shall adopt regulations to
22 implement the methods of valuation authorized in this article
23 of the Property Tax Code."

24 SECTION 2. A new section of the Property Tax Code is
25 enacted to read:

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1 "[NEW MATERIAL] SPECIAL METHOD OF VALUATION--LAND USED
2 PRIMARILY AS OPEN SPACE LAND.--

3 A. The value of land with a restrictive covenant
4 that requires the land to be used primarily as open space land
5 shall be determined on the basis of the land's use. The method
6 of value shall be its market value as determined by application
7 of the sales of comparable property if the land were
8 permanently restricted to the current use of open space land.
9 The value may be determined based on such considerations as
10 sales of land subject to permanent conservation restrictions,
11 sales of land subject to enforceable deed restrictions, before
12 and after appraisals of permanently restricted land in the area
13 and other relevant factors. The value shall not reflect
14 development or market value purposes other than open space use.

15 B. If a county assessor is unable to determine the
16 value of open space land under the method of valuation
17 described in Subsection A of this section, the assessor may
18 value that land by applying up to a twenty percent reduction
19 off the current and correct value of the land.

20 C. The department shall provide county assessors
21 with a list of urban areas. The department shall adopt rules
22 for determining whether land is used primarily as open space
23 land and for determining the value of land used primarily as
24 open space land. The rules shall specify procedures to use in
25 determining the value of open space land. The rules shall

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1 provide that the:

2 (1) use of land that is developed, improved or
3 has physical structures, whether permanent or temporary, shall
4 not be considered as land used primarily as open space land;
5 and

6 (2) value of land used primarily as open space
7 land shall not be less than the value of land used primary for
8 agricultural purposes.

9 D. The owner of the land shall make application to
10 the county assessor in a tax year in which the valuation method
11 of this section is first claimed to be applicable to the land,
12 or in a tax year immediately subsequent to a tax year in which
13 the land was not valued under this section or in which a change
14 in ownership occurs. Application shall be made under oath,
15 shall be in a form and contain the information required by
16 department rules and shall be made no later than thirty days
17 after the date of mailing by the assessor of the notice of
18 valuation. Once land is valued under this section, application
19 need not be made in subsequent tax years as long as there is
20 neither a change in the use of the land nor a change in
21 ownership.

22 E. The owner of land valued under this section
23 shall report to the county assessor whenever the use of the
24 land changes so that it is no longer being used primarily as
25 open space land. This report shall be made on a form

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1 prescribed by department rules and shall be made by the last
2 day of February of the tax year immediately following the year
3 in which the change in the use of the land occurs.

4 F. Any person who is required to make a report
5 under the provisions of Subsection E of this section and who
6 fails to do so is personally liable for a civil penalty in an
7 amount equal to the greater of one thousand dollars (\$1,000) or
8 twenty-five percent of the difference between the property
9 taxes ultimately determined to be due and the property taxes
10 originally paid for the tax years for which the person failed
11 to make the required report.

12 G. As used in this section:

13 (1) "open space land" means real property with
14 a lot size of one acre or more that:

15 (a) is located in an urban area;
16 (b) is undeveloped and permeable;
17 (c) on and after January 1, 2017, has
18 access to an acequia or an operational well that can irrigate
19 the land;

20 (d) enhances the value of nearby
21 neighborhoods, public parks, wildlife refuges, nature
22 reservations or sanctuaries or other open space land; and

23 (e) has a current use that will: 1)
24 preserve and retain the natural state of the land; 2) conserve
25 and enhance natural or scenic resources; or 3) protect water

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1 supply or otherwise allow for the permeation of water into the
2 ground; and

3 (2) "urban area" means an area with a
4 population density of at least one thousand seven hundred fifty
5 people per square mile according to the most recent federal
6 decennial census."

7 SECTION 3. APPLICABILITY.--The provisions of this act
8 apply to the 2018 and subsequent property tax years.