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FISCAL IMPACT REPORT

ORIGINAL DATE 3/01/17

SPONSOR Padilla LAST UPDATED _____ HB _____

SHORT TITLE Valuation of Certain Open Space Land SB 459

ANALYST Iglesias

REVENUE (dollars in thousands)

Estimated Revenue					R or NR **	Fund Affected
FY17	FY18	FY19	FY20	FY21		
\$0.0	\$0.0	(\$600.0)	(\$600.0)	(\$600.0)	Recurring	Bernalillo County
\$0.0	\$0.0	(\$100.0)	(\$100.0)	(\$100.0)	Recurring	Santa Fe County
\$0.0	\$0.0	Indeterminate			Recurring	Other Counties
\$0.0	\$0.0	Indeterminate			Recurring	State General Obligation Bonds

Parenthesis () indicate expenditure decreases. ** R = recurring; NR = non-recurring

Relates to SB350s

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

Senate Bill 459 adds a new Section to the Property Tax Code, which creates a special method of valuation for land that is primarily used as open space. The value of land restricted to be used primarily as open space would be based on market value, as if the land were permanently restricted to open space. The bill provides an alternate method of determining the value if a County Assessor is not able to use that method. This alternate method would be a 20 percent reduction on the current and correct value.

For this section “open space land” is defined as real property with a lot size of one acre or more in an urban area meeting very specific land use requirements.

The bill also provides language on how the owner of the land is to apply for the special method, as well as when they must notify the County Assessor that the land is no longer being used as open space.

A penalty is imposed, equal to the greater of \$1,000 or 25 percent of the difference between property taxes ultimately determined to be due and property taxes originally paid on land owners who fail to report to the county assessor whenever the use of land changes from primarily open space land.

Finally, the bill amends Section 7-36-15 NMSA 1978 to add reference to the new Section.

There is no effective date of this bill. It is assumed that the new effective date is 90 days after this session ends.

FISCAL IMPLICATIONS

The Taxation and Revenue Department (TRD) estimated that most properties that have lost agricultural valuation over the last several years in Bernalillo and Santa Fe counties have been in the urban areas of those counties. These properties would now be eligible for designation under the new open space valuation and therefore the counties would lose the additional revenue they have gained with the revaluation of these properties. Taxable values of re-designated properties and millage rates for these counties were then used to determine the loss in revenue based on those base property values.

The Property Tax Division (PTD) has insufficient data to estimate impacts for the remainder of the counties. As given in the technical issues below, it is difficult to define which areas qualify as an “urban area” in the bill, so TRD cannot determine if other counties may qualify. Likewise, it is not possible to tell what effect this loss in property tax revenues will have on the portion of those revenues which are used for state general obligation bonds.

The Department of Finance and Administration (DFA) indicates the definition of “urban area” in this bill means a population density of at least 1,750 people per square mile based on the most recent federal decennial census. According to data from the 2010 Census, the provisions of this bill appear to only apply to six municipalities, some of which meet the population density criteria only because of their small area in square miles. Those are Alamogordo, Albuquerque, Bayard, Las Vegas, Lovington, and Santa Clara.

DFA points out the greatest impact would be to the City of Albuquerque. According to a very rough estimate from the Bernalillo county assessor’s office, approximately 1,100 to 4,000 land parcels out of the 280,000 parcels within Bernalillo County would qualify for the open space special valuation method. DFA calculates that this translates to a potential decrease in property tax revenue of \$1 million due to a drop in net taxable value.

The state currently levies 1.36 mills statewide pledged for repayment of the state's general obligation bonds. To the extent the six municipalities impacted by this bill are impacted, a proportional impact will also be borne by the State.

SIGNIFICANT ISSUES

TRD points out the bill allows some property owners to maintain a lowered property tax valuation by establishing a restrictive covenant requiring the land to be used as open space for the length of the covenant. Because the definition of open space requires an urban environment and access to acequia or well water, this would appear to mostly help maintain traditional agricultural uses of land in areas where urban areas have arisen around them.

However, TRD indicates the bill penalizes those counties similar to those listed in the impact table above that have worked to properly value their agricultural land. The open space designation means that many of these properties would be classified again at a much lower valuation.

TRD also notes larger property tax policy issues that need to be considered. First, New Mexico has nearly the lowest property taxes nationally. Second, a large percentage of land within New Mexico cannot be subject to property taxation because it is owned by federal, state or tribal governments. In short, it is a relatively small tax base compared to other states. With this background in mind, counties may be concerned with revenue adequacy and moving non-productive agricultural land to its highest and best use. From the other perspective, landowners may raise concerns about the ability to retain land with the increase in taxes owed.

Additionally, TRD indicates a separate issue pertaining to consistency and enforceability. The restrictive covenant mentioned in section 2-A should include the definitions of open space given in section 2-G-1, subparts b and c. The application made by the owner in section 2-D should also include a copy of the restrictive covenant.

ADMINISTRATIVE IMPLICATIONS

County Assessors and County Treasurers would have a number of obligations under this bill, including: updating computer systems to accommodate an additional special method of valuation and land codes and processing applications for the new special method.

PTD would likewise be required to develop additional training to handle this new method of valuation. Overall, there would be minimal impact to TRD to implement the bill.

RELATIONSHIP

Relates to SB350, which applies a special valuation method for agricultural land.

TECHNICAL ISSUES

According to TRD, both methods of valuation given in sections 2-A and 2-B of the bill are contrary to generally accepted practices specified in Uniform Standards of Professional Appraisal Practice (USPAP) and current Property Tax Code, sections 7-36-15 and 7-36-16. Section 2-B of the bill, allowing the assessor to apply a 20 percent deduction to current and correct value, may also be arbitrary enough to violate equal and uniform taxation protections contained in the New Mexico constitution. TRD recommends amending the bill to ensure that USPAP applies to any valuation.

TRD also notes the method defined for determining whether a property is in an urban area, contained within section 2-G-2, is insufficient. TRD recommends amending the bill to specify which type of census-designated unit should be used: a Census Designated Place, a Census County Division, a County Subdivision, or some set of the above.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy:** Revenue should be adequate to fund needed government services.
2. **Efficiency:** Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity:** Different taxpayers should be treated fairly.
4. **Simplicity:** Collection should be simple and easily understood.
5. **Accountability:** Preferences should be easy to monitor and evaluate

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