

Synopsis of Bill

House Bill 332 amends the special method of valuation for land used primarily for agricultural purposes (7-36-20 NMSA 1978) by adding a new provision for a special method of valuing unimproved land used primarily for conservation purposes pursuant to a management plan approved by the Energy, Minerals and Natural Resources Department (EMNRD).

HB 332 also enacts a new section of the property tax code under 7-36-20.1 NMSA 1978 that creates a special method of valuation for the conservation of unimproved land. Under this new section:

- Eligible land is valued at 25 percent of current and correct value.
- The land must have been valued under 7-36-20 NMSA 1978 in the preceding five tax years.
- The land must be no more than 160 acres;
- Be no less than 10 acres unless a water right for agricultural purposes is attached to the land.
- The Taxation and Revenue Department, in consultation with EMNRD, will promulgate rules and guidelines to conserve unimproved land.
- Directions regarding valuation of improvements and method of application are specified.

There is no effective date of this bill. It is assumed the effective date is 90 days after this session ends (June 14, 2019); however, the provisions of this bill apply to property tax year 2020 and subsequent tax years. This creates a fiscal impact for property tax beneficiaries in FY21.

FISCAL IMPLICATIONS

TRD/LGD has prepared the following careful analysis of possible fiscal consequences of the provisions of this bill if, despite the possible unconstitutionality of the provisions of the bill, it is enacted. This analysis assumes that all nonresidential land over 10 acres would become eligible for this special method. The analysis further assumes land over 160 acres would be subdivided and subsequently become eligible for this special valuation method. The analysis also assumes properties that have lost their agricultural special method would be reincorporated in the tax abatement that this proposed legislation implies. The 105 percent eligibility (note 1) reincorporates the properties that had their agricultural special method removed. The analysis also assumes that 25 percent of current and correct would provide a lesser valuation than 100 percent of current and correct as agricultural land.

Methodology for Estimated Revenue Impact:

<u>Revenue Shift/Loss Method</u>		
Taxable Non Ag Land Over Ten Acres	\$ 670,132,718	
Taxable Value All Ag Land	<u>\$ 212,243,636</u>	
Total Value	\$ 882,376,354	
Estimated Percentage Affected	105.0%	Note 1
Resulting Land Taxable Value	\$ 926,495,172	
Millage Rate Non Residential	<u>31.553</u>	
Existing Property Tax Revenue	\$ 29,233,702	
Proposed Valuation Ratio	25.0%	
Resulting Tax Revenue Per HB0332	<u>\$ (7,308,426)</u>	
Revenue Shift/Loss Per HB0332	\$ 21,925,277	
Non Residential Taxable Value	\$ 212,243,636	
Non Residential Revenue	\$ 566,212,130	
Revenue Loss/Shift Per HB0332	\$ 21,925,277	
Revenue Loss / Shift %	3.9%	
(1) Includes Agricultural Removals		
which equate to 5% Non Res Land		

DFA/LGD provides the following description of the fiscal implications of this bill:

“Indeterminate revenue impact to property taxing entities statewide. The impact will depend on the extent to which the special valuation method authorized by this bill will affect the property tax base (i.e. increases or decreases in property valuations). However, the purpose of the bill seems to be to allow a lower property valuation for unimproved land that is used primarily for land conservation purposes. If the unimproved land meets the criteria in this bill, it shall be valued at 25 percent of the current and correct value. Yield control applicable to certain mill rates pursuant to Section 7-37-7.1 NMSA 1978, and debt mill levy rate adjustments would likely increase mill levies to make up for decreases in property valuations as a result of this new special valuation method. This means that the tax burden will shift to other taxpayers that don’t qualify for the new special valuation method.”

LFC staff note a concern the “25 percent of current and correct” special method of valuation vacant land used for agricultural or conservation purposes may be unconstitutional without an authorizing constitutional amendment to Article VIII, Section 1 of the New Mexico Constitution. However, if that concern is not validated and the provisions are enacted into law, potential negative effects are as follows:

- The worst-case impacts as calculated by TRD.
- As noted in the DFA/LGD analysis above, “Yield control applicable to certain mill rates pursuant to Section 7-37-7.1 NMSA 1978, and debt mill levy rate adjustments would likely increase mill levies to make up for decreases in property valuations as a result of this new special valuation method. This means that the tax burden will shift to other taxpayers that don’t qualify for the new special valuation method.”
- State general obligation bond (GOB) capacity, limited to 1 percent of assessed value (Article I, Section 8, New Mexico Constitution), will decrease by the difference between 100 percent of current and correct value for land affected by the provisions of this bill and 25 percent of current and correct. In aggregate, this valuation reduction will proportionally reduce bond capacity. As a general rule of thumb a 1 percent reduction in available revenues would create a 5 percent reduction in total bond capacity. This is unlikely to be significant because the state has never approached this one percent limit.
- Municipal and county GOB capacity, which is limited to 4 percent of assessed value (Article IX, Section 13, New Mexico Constitution) and School District GO bond capacity, limited to 6 percent of assessed value (Article IX, Section 11, New Mexico Constitution), would decrease. For some jurisdictions, this reduction could be significant.

DFA/LGD provides additional insight:

HB332 proposes to create a new category of agricultural special valuation method based on the land being primarily used for conservation purposes pursuant to a management plan approved by the EMNRD. The unimproved land must be greater than 10 acres but no than 160 acres, or can be 10 acres or less if a water right for agricultural purposes is appurtenant to the land. Land used for a residential or commercial purpose is not eligible. The unimproved land eligible for this special valuation method shall be valued at 25 percent of the current and correct value.”

This bill creates a tax expenditure with a cost difficult to determine but likely significant. LFC has serious concerns about the significant risk to state and local revenues from tax expenditures and the increase in revenue volatility from erosion of the revenue base.

SIGNIFICANT ISSUES

LFC staff note concerns the provisions of this bill may be unconstitutional. See TECHNICAL ISSUES” for an explanation.

TRD/LGD points out a perhaps unintended consequence of this proposal.

This will likely result in a decline in agricultural uses. If the tax incentive for agricultural uses is eliminated, there will likely be an increase in water rights consolidation and land banking. The supply of available land suitable for agriculture will diminish. To the extent

that land owners are subject to normal risk and labor minimizing commercial motivations, the character of New Mexico will shift from an agricultural/ranching state to a hunting state.

HB 332 is written for 10-160 acres (one quarter section) properties. There is every reason to believe that sophisticated land owners will subdivide or combine their lots to gain the maximum benefit from the legislation.

“Despite protections to agricultural special method holders including the right to rest and land, moderate drought protections and placing the burden of proof on the Assessors, many of our those Assessors performed the hard work of removing agricultural special methods from properties that didn’t maintain their fences, irrigation ditches or keep the properties free from invasive species. This legislation renders their work an ineffective and politically costly wasted effort. This is a harmful precedent for enforcement of the Property Tax Code.”

DFA/LGD notes the following:

Agricultural land is valued much lower than other classifications (such as land used for residential purposes). Property owners who use their land for agricultural purposes are able to take advantage of a special valuation method that lowers their property taxes. This bill would allow those property owners to keep benefitting from the special agricultural valuation method even if the land ceases to be primarily used for agricultural purposes.” [LFC staff note that 25 percent of current and correct may, in some or many cases, render a valuation even lower than that determined pursuant to the special agricultural valuation method.]

The owner of land claiming this new valuation method must make an application to the owner’s county assessor in a tax year in which this valuation method is first claimed to be applicable or in a tax year immediately subsequent to the tax year in which the land was not valued under this new method, if there was a change in land use or ownership, or five years after the tax year in which the last application was made and granted.

Even though PTD sends out guidelines on agricultural special valuation methods, there may be variances as to how the methods are actually applied by each county assessor, who must consider factors unique to their county when valuing property. For example, some agricultural land is located in remote areas impacted by adverse weather conditions that make roads inaccessible, making it difficult for county assessors to reappraise those properties regularly.

As detailed in this bill, qualified guidelines means guidelines established for conservation and management practices that are appropriate to conserve and maintain the unimproved land.

Input should be sought from PTD on several aspects of this bill. For example, whether the property valuation method described in the bill is reasonable and in line with professional standards for appraisers.

NMDA has provided additional comment on the provisions of this bill:

The new definition of agricultural use proposed in this bill would allow land to be valued as if it were producing agricultural products when it is being put to other uses such as wildlife habitat or unimproved land. NMDA notes that although agricultural use, wildlife habitat, and unimproved land are not mutually exclusive uses of the land, the purpose of the special valuation for agricultural purposes is to value land based on its capacity to produce agricultural products, which implies that production is a necessity of the special valuation unless external factors are inhibiting the capacity to produce, such as drought.

The provision that landowners write and obtain approval of a land management plan by EMNRD allows landowners to value their unimproved land based on 7-36-20 rather than the higher tax valuation found in the proposed 7-36-20.1 counteracts the purpose of the new proposed section.

The requirement that EMNRD promulgate rules that “require a description of the land and specify the conservation and management practices that are appropriate....” Reduces the flexibility of landowners to adapt to changing situations and emerging technologies. Also, what expertise would the department require to create a land management plan?

There is not a mechanism for ensuring compliance with the new special method of conservation. Currently, county assessors can verify if a landowner is engaged in agricultural production through personal property taxes (i.e., livestock taxes that are taxed as personal property). After approval of a plan by EMNRD, how will county assessors ensure compliance with the plan?

It is unclear how EMNRD will identify natural resource and agricultural priorities for specific pieces of land and what expertise would be necessary to do so.

The requirement for EMNRD to determine which management practices would be appropriate for specific types of land could place a burden on the agency and may not be within the agency’s current expertise.

It is unclear happens if the owner wants to return to ‘agricultural uses’ from “unimproved land.

The new special valuation for unimproved land contains no recapture provisions. Absent the recapture provision, there is concern that the new section would encourage land speculation. Investors could buy agricultural land, cease agricultural production and apply for special valuation of unimproved land, further decreasing the tax base associated with the land. This would burden the local tax base by allowing speculators to reduce their tax liability while seeking an opportunity to develop agricultural land.

ADMINISTRATIVE IMPLICATIONS

DFA/LGD notes the following:

HB332 has administrative implications to county assessors who would have to apply the special valuation method described in the bill. The increased workload to counties is indeterminate because it is difficult to estimate how many land owners will be affected by

the provisions of this bill. Counties with more agricultural land will be more heavily impacted.

HB332 also has an administrative impact on EMNRD and PTD, who would be required to promulgate rules for determining whether land is used primarily to conserve the unimproved land pursuant to qualified guidelines. PTD would also have to develop the required application for claiming the special valuation method and the form for land owners to report land use changes.

TECHNICAL ISSUES

LFC staff note a concern the “25 percent of current and correct” special method of valuation vacant land used for agricultural or conservation purposes may be unconstitutional without an authorizing constitutional amendment to Article VIII, Section 1 of the New Mexico Constitution. Page 8, lines 1 and 2 use the phrase, “shall be valued at twenty-five percent of the current and correct value.” This seemingly violates, on its face, Article VIII, Section 1, that requires all real property in the state to be assessed at current and correct values. The precise wording is “taxes levied upon tangible property shall be in proportion to the value thereof, and taxes shall be equal and uniform upon subjects of taxation of the same class.”¹ A number of cases have been brought over the years in which the courts have sustained the general principle of “current and correct” as market value. The attempt in this bill to overturn “current and correct” for a limited class of property must be enabled by a constitutional amendment authorizing such a change. It is useful to note the special method for agricultural valuation refers to the value of the land when used for agricultural purposes. The attempt in this bill to establish a new class of land with valuation that bears no relationship to either “current and correct” or the value for special purposes is unconstitutionally questionable.

TRD provides the following analysis of possible technical issues with the bill:

- Review and approval of the management plan by ENMRD needs to comport with the five year standards for reappraisal and review in the property tax code.
- The property tax statutes don’t require Assessors or the Department to track water rights. The State Engineer (Hydrology Department) needs to be involved if any judgement on water rights is incorporated in this statute.
- County Assessors and the Department should have the ability to inspect, conform or contest the status of property maintenance.
- The particulars of qualified management plans are not disclosed. Those documents have the same effect as appraisals and are not subject to review by the Assessors, who are responsible for valuation of the properties.
- Section 2 enacts a new section titled “Special Method of Valuation—Conservation of Unimproved Land—Recapture.—”. However, there are no provisions within the section about recapture in case a property owner fails to live up to the management plan.
- The assessor has no avenue to object to the categorization of the property management plan. The landowner, however does have protest rights regarding valuation under the property tax code.

¹ Section 7-36-20 NMSA 1978 establishes special method of valuation for land used primarily for agricultural purposes, determined on the basis of the land's capacity to produce agricultural products. This "green belt" law is clearly an exception to the general mode of property valuation for tax purposes established by the property tax code and the New Mexico constitution, i.e., market value. *County of Bernalillo v. Ambell*, 1980-NMSC-062, 94 N.M. 395, 611 P.2d 218.

- The provision that landowners write and obtain approval of a land management plan by EMNRD allows landowners to value their unimproved land based on 7-36-20 rather than the higher tax valuation found in the proposed 7-36-20.1 counteracts the purpose of the new proposed section.
- This conflicts with 7-36-2 NMSA which allocates the responsibility for valuation and classification of all property subject to valuation for property tax purposes to the county assessor or the department.
- It is unclear if this legislation will interfere with HB88 2018 which was intended to repurpose abandoned property. The owners of zombie subdivisions have been able to bank land indefinitely after ten years. It's unclear if they could meet the terms of this legislation without having their property taxes paid in full or if the delinquencies would reduce over time.

This bill does not contain a delayed repeal date. LFC recommends adding a delayed repeal date.

OTHER SUBSTANTIVE ISSUES

As an issue of disclosure, the author of this FIR (Laird Graeser) owns property in Santa Fe County that would become eligible for this special method valuation pursuant to proposing and having approved a conservation plan.

LG/al