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## FISCAL IMPACT REPORT

**SPONSOR** King                      **DATE TYPED** 03/10/05                      **HB** 816/a HENRC/a HTRC

**SHORT TITLE** Clarify Land Conservation Incentives Act                      **SB** \_\_\_\_\_

**ANALYST** Padilla-Jackson

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
NFI	NFI			

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Energy, Minerals & Natural Resources Department (EMNRD)

Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of HENRC Amendment

The House Energy and Natural Resources Committee (HENRC) amended House Bill 816. The amendment replaces the existing Section E with a slightly more defined version, stating that no land or interest for which a credit has been claimed can be transferred to a third party without prior written notice from the transferor to the person claiming the credit (or to that person's successor), adding the part about the successor. The amendment also defines "prior written notice" to mean a written document sent first class, certified mail, return receipt requested, to the last known address of the recipient thirty day in advance of the transfer.

Lastly, the amendment strikes Section F entirely, which would require that a conveyance be conducted by a licensed broker or real estate salesperson.

#### Synopsis of HTRC Amendments

The House Taxation and Revenue Committee amended House Bill 816. The first amendment would strike the HENRC amendment above, in its entirety. The second amendment would replace Section E with a new section further clarifying the statement referring to a person's successor. The HTRC amendment replaces the reference to the person's successor with "the current

owner of record with regard to the remaining interest, if the person claiming the tax credit has transferred a remaining interest in real property subject to the tax credit.”

The amendment would also strike Section F, which would require that a conveyance be conducted by a licensed broker or real estate salesperson.

### Synopsis of Bill

House Bill 816 clarifies portions of the Land Conservation Incentives Act (LCIA). The bill expands the definition of “interest in real property” to include “partial interest, mineral interest, remainder interest, future or other interest or right in real property”. It changes the definition of “land”, removing “rights of way, easements, privileges, and all other rights or interests of a land or description relating to or connected with a real property” and includes “an interest in real property”.

Lastly, the bill adds the following requirements to the act:

- D. An outside party cannot have an enforcement right pertaining to a conveyance made pursuant to the LCIA
- E. No land or interest in real property may be transferred to a third party without prior notice and written consent of the person claiming a tax credit
- F. A conveyance pursuant to the LCIA shall be conducted by a licensed broker or real estate salesperson

There is no effective date provided for this bill.

### Significant Issues

EMNRD provided the following comments:

The LCIA allows a tax credit for the donation of land for conservation purpose to a qualified agency. The tax credit is 50 percent of the appraised value of the donation, up to a maximum of \$100,000. The three additional requirements go beyond the purpose of the LCIA, which is to provide incentives for conservation donations of property. Paragraph D directly conflicts with the Land Use Easement Act, which allows third-party enforcement of easements when agreed to by both parties. Efforts to prohibit third-party enforcement of easements would be better if directed at this statute and not the LCIA.

Well-written conservation easements will state that a third party will accept and enforce the easement when the original grantee ceases to exist or is no longer able to enforce the easement. This event could be decades into the future and a specific entity usually cannot be identified. Paragraph E would require the third party to be identified and agreed upon by the grantor and grantee, which may not be possible. What happens if the donor refuses to consent to a transfer and the original grantee is dead or has ceased to exist? The donor should not be able to direct what happens to the interest he has sold or otherwise transferred. Also, this requirement of consent to transfer would be unnecessary for grantors of full-fee donations, who have relinquished all interest in the property.

Paragraph F would be a first for property law, by requiring all LCIA conveyances to be brokered by a licensed realty agent. Section 47-1-4 of NM Property Law guarantees a right of conveyance, and does not require the services of a realty agent in transactions between a willing grantor and willing grantee.

Therefore, these three additional paragraphs are more appropriate amendments to New Mexico Property Law and the Land Use Easement Act. Conveyances under the LCIA are only a minor subset of all conservation land conveyances in the state.

### **FISCAL IMPLICATIONS**

According to TRD, there are no fiscal impacts associated with the original bill, or the bill as amended by HENRC or HTRC.

### **ADMINISTRATIVE IMPLICATIONS**

No significant administrative impact to the TRD.

### **TECHNICAL ISSUES**

TRD provided the following issue:

Section 1 of the bill amends the definitions of “interest in real property” and “land”. Section 3 of the bill retains language from the 2003 law, which refers to “land or an interest in land”. “Interest in land” is not a defined term. However, “land” is defined to include “an interest in real property”, Section 1, p. 2, lines 6-7, so the reference to “an interest in land” is redundant. In addition, the reference is inconsistent with another provision added by the bill, which refers to “land or an interest in real property.” Section 3, p. 4, line 16. TRD suggest deleting the phrase “or an interest in land” in Section 3, page 3, line 25 or change the phrase to “or an interest in real property”.

**OPJ/yr:lg**