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FISCAL IMPACT REPORT

ORIGINAL DATE 2/03/06

SPONSOR Lujan, B. LAST UPDATED _____ HB 601

SHORT TITLE Property Transfer Disclosure Affidavits SB _____

ANALYST Earnest

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 601 amends to of the Property Tax Code (Section 7-38-12.1 NMSA 1978) to allow affidavits of real estate sales to become public information. Current law requires sellers to disclose sales prices of properties by confidential affidavit to county assessors stating the terms of the sale. HB 601 removes the confidentiality clause and removes misdemeanor sanctions for the release of information provided in disclosure affidavits.

FISCAL IMPLICATIONS

None identified.

SIGNIFICANT ISSUES

By removing the confidentiality clause, HB 601 would allow the use of affidavit information in property valuation hearings.

ADMINISTRATIVE IMPLICATIONS

There would be minimal, if any, impact on the operations of the Property Tax Division or TRD.

TECHNICAL ISSUES

The Property Tax Division of TRD recognizes the need for the proposed clarifying legislation and suggests one technical correction: the bill should be amended to provide that affidavits are discoverable as part of the assessor's valuation records [Section 7-38-4(A)].

OTHER SUBSTANTIVE ISSUES

The Property Tax Division also recognizes that the change in confidentiality will apply only to affidavits filed after the effective date of the legislation, July 2006, so persons who filed the affidavits in reliance on their confidentiality will be protected.

ADDITIONAL BACKGROUND INFORMATION

The 2003 legislature enacted Section 7-38-12.1(C), directing property transfer affidavits be retained by the county assessor "as a permanent, confidential record" and determined that affidavits "shall not be construed to be a valuation record" Section 7-38-12.2 (A), imposes misdemeanor sanctions on persons who intentionally fail to file the transfer affidavit or knowingly make a false statement in the affidavit. Section 7-38-12.2(B) provides immunity to the "secretary, any employee or former employee of the department or any other person subject to the provisions of Section 7-38-12.1", who willfully releases information contained in the affidavits as part of a protest proceeding.

These statutory clauses were interpreted differently by county assessors. The Property Tax Division took the position that Section 7-38-12.1(C) and (F) prohibited county assessors from introducing information provided in property transfer affidavits at a protest hearing, unless the protestant was a party to the sale for which the affidavit was filed. In contrast, a group of assessors believed that the exemption from criminal penalties for the release of information from a property transfer affidavit at a protest hearing [Section 7-38-12.2 (B)] allowed use of the affidavits to prove value at protest hearings.

TRD provided a written legal analysis of its position to several of the county attorneys and sought their opinions. Speaker Lujan then requested a written legal opinion from the Legislative Council Service (LCS). In August, the LCS staff attorney prepared an opinion, which supported use of the affidavits at protest hearings and proposed a test court case. The county valuation board's attorney found too great a threat of civil liability to board members to recommend introduction of the disclosure affidavits at valuation protests. Subsequently the department met with the county association's attorney and agreed to a regulation that would clarify the statute and allow disclosure. That proposed regulation stated that:

Affidavits submitted pursuant to NMSA 1978, Section 7-38-12.1 may be introduced at county valuation protest board hearings by either a protestant or the assessor. The protestant utilizing the affidavit as evidence need not be the transferor or transferee of the property which is the subject of the affidavit.

The regulation has not been promulgated.

ALTERNATIVES

Legislation could be enacted to ensure TRD's promulgation of the proposed regulation.

BE/yr