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FISCAL IMPACT REPORT

ORIGINAL DATE 1/23/09

SPONSOR Cisneros LAST UPDATED _____ HB _____

SHORT TITLE Land Grant Property Conveyance Tax Credits SB 32

ANALYST Gutierrez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
See Narrative	See Narrative	See Narrative	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

Energy, Minerals and Natural Resources Department (EMNRD)

State Land Office (SLO)

SUMMARY

Synopsis of Bill

Senate Bill 32 adds land grant-merced controlled and governed as a political subdivision of the state to the list of entities listed in the definition of “taxpayer” in Section 7-2-18.10 NMSA 1978 of the Personal Income Tax Act and Section 7-2A-8.9 NMSA 1978 of the Corporate Income and Franchise Tax Act. This would allow these land grants to be eligible to claim the credits allowed in these sections for certain conveyances of real property.

This bill is being proposed on behalf of the Land Grant Committee.

Because the bill has no effective date, it would become effective 90 days after the 2009 legislature adjourns (June 19, 2009).

FISCAL IMPLICATIONS

The bill is anticipated to have a relatively small negative effect on revenues. However, the Taxation and Revenue Department and the Legislative Finance Committee have insufficient information to provide an estimated revenue impact. According to TRD, such an estimate would

require information regarding the number of land grants affected by the revision to the statute, their land holdings, how much of that land might be conveyed to an eligible public or private conservation agency, and the fair market value of the conveyance(s). Because land grants likely have no income tax liability, the credit could be used to offset income tax liability only if it were transferred to another taxpayer. A revenue estimate would thus also require information pertaining to the likelihood of the transfer of credit to another taxpayer, as well as the tax liability of the taxpayer to whom the credit was transferred.

SIGNIFICANT ISSUES

A land grant-merced is “a grant of land made by the government of Spain or by the government of Mexico to a community, town, colony, or pueblo or to a person for the purpose of founding or establishing a community, town or pueblo” (Section 49-1-1.1). The State Land Office should not hold land grant-merced however, because of the manner in which these grants were made; it is not possible to say with an absolute certainty that SLO does not hold any land grant-merced. There is a very remote possibility that if SB32 is passed and the credit is extended to land grant-merced and a piece of land grant-merced was identified as part of state trust land, then the state trust land would be considered more valuable either to a potential purchaser or if it were included in an exchange.

The Land Conservation Incentives Act (LCIA), Sections 7-2-18.10 and 7-2A-8.9 NMSA 1978 offer tax credits for charitable donations of land or an interest in land (conservation easement) to a qualified government or non-profit conservation agency for the purpose of open space, natural resource or biodiversity conservation, agricultural preservation or watershed or historic preservation. A transferable tax credit may be claimed for half the appraised value of the donation up to a maximum of \$250,000. The EMNRD Secretary, in consultation with the Natural Lands Protection Committee, must determine the donation to be significant and important to the state before the donation is certified for tax credit by Taxation and Revenue Department. Some of these land grant-merced own large areas of common land that could be protected from subdivision and development by conservation easement donations to qualified donees.

Only taxpayers are eligible for the tax credit. This bill amends the definition of “taxpayer” to include community land grant-merced that are political subdivisions of the state. Eighty-two Hispanic land grants in New Mexico were confirmed in the federal Court of Private Land Claims by 1891 – following the Treaty of Guadalupe Hidalgo. The legislature passed statutes in 2004 to give land grants the ability to become political subdivisions of the state (Sections 49-1-1 to 49-1-18 NMSA 1978) and incorporate as communities (Sections 49-2-1 to 49-2-18 NMSA 1978). Twenty-two land grants had political subdivision status by 2007. Sale of land from a land grant-merced is governed by statute (Section 49-1-11 NMSA 1978) and the by-laws of the land grant-merced. Donation of land or conservation easements by the community land grants would most likely occur on lands held in common (ejidos) by the land grant heirs. Common lands are typically used for livestock grazing, hunting, wood harvest and other natural resource use by the heirs only. Common lands cannot be sold or leased without majority consent of the land grant heirs.

ADMINISTRATIVE IMPLICATIONS

There would be a minimal impact to TRD. Modifications would need to be made to existing forms, instructions, and publications. The PIT and CIT instructions can be changed during the creation of 2009 forms and instructions at minimal costs. Procedures for identifying and approving land conveyances by qualifying land grants will need to be developed by EMNRD, and the TRD property tax division will need to develop audit and approval procedures.

The EMNRD Secretary administers the land conservation tax credit program with EMNRD's Office of the General Counsel and two FTEs in the Division. Additional applications for tax credit will increase time demands on these employees.

PERFORMANCE IMPLICATIONS

According to EMNRD, the Forestry Division's (Division) mission of providing for healthy forests and watersheds in New Mexico includes the administration of the LCIA and its rules. This program assists landowners in protecting natural resource values on their lands. Expanding programmatic eligibility will expand the Division's opportunities to encourage protection of forests, watersheds and other natural resource values in New Mexico.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If this bill is not enacted, New Mexico land grant-merced could still donate land or interests in land for conservation purposes, but would not have the incentive of a transferable tax credit to do so.

BLG/mt

The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:

- 1. Adequacy:*** revenue should be adequate to fund government services.
- 2. Efficiency:*** tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.
- 3. Equity:*** taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.
- 4. Simplicity:*** taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.
- 5. Accountability/Transparency:*** Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.

More information about the LFC tax policy principles will soon be available on the LFC website at www.nmlegis.gov/lcs/lfc