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FISCAL IMPACT REPORT

ORIGINAL DATE 01/27/14
 SPONSOR Cote LAST UPDATED 01/28/14 HB 38
 SHORT TITLE Transfer Of Property To State Tax Exemption SB _____
 ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16	FY17	FY18		
	***	***	***	***	Non-recurring?	Local Funds
	***	***	***	***	Non-recurring?	General Obligation Bond Fund

Parentheses () indicate a revenue loss. ** Recurring (R) or Non-Recurring (NR).

***This legislation has the potential to reduce delinquent property tax collections harming the beneficiaries of property taxes. Because this is a narrow class, the effects will be localized and be largely non-recurring for any particular jurisdiction.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department

SUMMARY

Synopsis of Bill

House Bill 38 amends the special procedures for administration of taxes on real property and relieves a property owner from paying property taxes prior to filing a plat pursuant to a transfer when the subject property is divided or combined and when the property will be transferred to the State or a local government. This may be a very narrow class, but TRD asserts that the bill may provide a mechanism for delinquent property owners to avoid paying the delinquent tax. There must be a written agreement to transfer the real property to the state or any of its political subdivisions. Since the bill carries an emergency clause, it may be designed with a particular property transfer in mind.

FISCAL IMPLICATIONS

The conditions under which the provisions of this bill apply are very narrow. Nor does the bill relieve the property owner of the ultimate obligation to pay the taxes on a property. It only relieves the obligation to pay the taxes prior to filing a plat. However, TRD asserts that this bill may provide a mechanism for delinquent property owners to avoid paying the delinquent tax. If this is the case, there could be future fiscal impacts that would be non-recurring in nature and only affect a few jurisdictions.

EFFECTIVE DATE

Emergency clause; effective upon signature by the Governor.

SIGNIFICANT ISSUES

TRD comments, “The state and all of its political subdivisions are allowed to own real property without being obligated to pay property taxes. It is a long-standing legal precept that taxing authorities should not tax themselves. This legislation should not be confused to be an extension of that rule. Instead, this bill grants delinquent taxpayers who have an unspecified type of written agreement the right to change the status of their property in a way that makes the delinquency almost impossible to resolve. Further, it forces the state or political subdivision to act against its interests and those of its property tax beneficiaries. It tempts the state or political subdivision to lower its property acquisition costs without settling the obligations owed to property tax beneficiaries and creates the appearance of impropriety. Section 7-38-44.1 NMSA 1978 was put into place to avoid this type of conflict.”

TRD continues, “...this revision to Section 7-38-44.1 NMSA 1978 seems at odds with the New Mexico Constitution provisions for tax exempt property. Section 8, Article 3 states that property acquired by the United States government or by the state of New Mexico by outright purchase or trade is exempt from taxation. This stipulation is followed by the proviso that “where such property was, prior to such transfer, subject to the lien of any tax or assessment for the principal or interest of any bonded indebtedness shall not be exempt from such lien, nor from the payment of such taxes or assessments. The premature granting of a split or combine is based on a written agreement to transfer the property to the state or one of its political subdivisions sidesteps the intent of this constitutional principle prior to transfer.”

OTHER SUBSTANTIVE ISSUES

TRD comments, “... the provisions of this bill have the potential to increase uncollectable property tax delinquencies”.

ADMINISTRATIVE & COMPLIANCE IMPACT

TRD comments, “... the administrative impact of this proposed bill is caused by creating a class of divided and combined property that is handled outside of the normal process of requiring payment for property taxes before the division or combination is approved. This creates confusion and unequal treatment based on the prospective purchaser of the delinquent property. The amendment complicates the collection of delinquent taxes by changing property legal description, ownership, and boundaries to something different than the property that secured the original delinquent tax lien. The Property Tax Division of the NM Taxation and Reservation Department has not tested a delinquent collection action that would revert legally subdivided property to accommodate a sale of multiple owner interests.”

TECHNICAL ISSUES

TRD's analysis comments, "... the bill doesn't say what sort of written agreement is required. It could be argued that an option agreement, reversion agreement, partial interest, lease or donation would fulfill the requirements of this amendment. This amendment weakens Regulation 3.6.5.15(X) NMAC (promulgated under Section 7-36-7 NMSA 1978) which speaks to the survivability of tax liens after sale to the State citing the New Mexico Constitution."

Although this bill is couched in general language, if it applies only to a limited class of property transfers, the bill may violate Article IV, section 24 of the Constitution that prohibits the legislature from passing local or special legislation to forgive or delay payments of tax.

LG/ds:jl

