F I S C A L I M P A C T R E P O R T

SPONSOR Lundstrom **ORIGINAL DATE** 1/23/15 **LAST UPDATED** 3/9/15 **HB** 141/a HWMC

SHORT TITLE Special Method of Property Tax Valuation for Recreational Land **SB**

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17	FY18	FY19		
	0.0	0.0	0.0	0.0	Recurring	GO Bond Fund
	0.0	0.0	0.0	0.0	Recurring	All State taxpayers (debt)
	0.0	0.0	0.0	0.0	Recurring	All local beneficiaries (operating)
	0.0	0.0	0.0	0.0	Recurring	All local taxpayers (operating)
	0.0	0.0	0.0	0.0	Recurring	All local beneficiaries (debt)
	0.0	0.0	0.0	0.0	Recurring	All local taxpayers (debt)

(Parenthesis ( ) indicate revenue decreases)

[*] Only land previously valued pursuant to the provisions of the agricultural special method will be eligible for this new classification as recreational land, so minimal fiscal impacts are expected. There may be a small transition-year effect as land which had formerly been classified as agricultural special method property, but then lost that classification because of abandonment will regain the lower agricultural valuation as recreational land.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		*	*	*	Recurring	TRD Property Tax Division
Total		*	*	*	Recurring	County Assessors

(Parenthesis ( ) indicate expenditure decreases)

[*] TRD/PTD and the County Assessors may have difficulty implementing the provisions of this bill. See analysis below.

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Attorney General's Office (AGO)

SUMMARY

Synopsis of HWMC Amendments

House Ways and Means Committee amendments restrict the expansion of this proposed special method of valuing recreational land to land that currently or recently has qualified as agricultural special method land. The amendment further instructs that the value of the property as recreational land will be the same value determined by the county assessor for the land as if it continued as agricultural land. The amendment also clarifies that the agreement must be with the legislature or an elected city or county government having jurisdiction over the property and that that body must deem the land recreational. Once land has qualified as recreational land, it remains in that status until its recreational use is abandoned. At that point, if the land is returned to agricultural production, the landowner can reapply, de novo, for agricultural special method valuation. Otherwise, the land would be reclassified as non-residential property.

Synopsis of Bill

House Bill 141 adds a recreational use special method of valuation for property subject to the Property Tax Code. Land is to be classified as recreational if:

- it is used primarily for public recreational use,
- it is deemed recreational property by a governing body;
- pursuant to an agreement between the owner and a state or local government, it is made available to the public for recreational use at no charge; and
- the owner has applied to the county assessor for the recreational classification.

The TRD Property Tax Division is assigned the task of determining the value of land classified as recreational property.

A landowner who changes the use of the property and no longer qualifies for recreational special value faces a penalty of 25% of the difference between the amount in property tax owed and the amount paid if the change is not reported to the assessor.

The bill has no effective date: assume June 19, 2015. The provisions of the bill are applicable for the 2016 and subsequent property tax years.

FISCAL IMPLICATIONS

HWMC amendments clearly restrict the population eligible for this new special method of valuation for property tax purposes to land and landowners that currently or have recently qualified for the agricultural special method. Once the land has been qualified as recreational special method land, it will be valued as if it were still used for agricultural purposes. These amendments effectively reduce the fiscal impact to zero, or slightly positive. A taxpayer that changes from recreational land to any other use (and fails to reapply for agricultural special method) will owe a civil penalty of $25 or 25% of the difference between the amount in property tax owed and the amount in property tax paid on the property. 7-36-20H NMSA 1978 provides the same penalty for failure to report change in agricultural use. A recreational landowner contemplating abandoning the recreational use of the land must reestablish agricultural production at some point in the year preceding the change. Otherwise the County Assessor will probably convert the land from recreational special method to non-agricultural land for the year following the conversion. If agricultural production is reestablished, the county assessor may or may not reclassify the land back to agricultural special method after one year of actual production.

Some of the land that might qualify for this new special method may have already been reclassified as non-residential property, having lost the agricultural special method valuation because of abandonment. There may be a small transition-year fiscal effect as land which had formerly been classified as agricultural special method, but then lost that classification because of abandonment will regain the lower valuation as recreational land.

The civil penalty will almost insure that no landowners who change the recreational use will report that change. If they report the change, then they will owe 100% of the difference between the land as valued under the agricultural special method and the land as non-residential property. If they do not report the change, then they will owe 25% of the difference between the land as valued under the agricultural special method and the land as non-residential property.

To the extent that county assessors already have the ability to determine a fair market value of land subject to a conservation, agricultural or recreational easement, this bill does not have any fiscal effect.

In summary, this legislation will only benefit a few landowners:

- land is currently or recently qualified for agricultural special method valuation;
- land no longer used for agricultural production;
- assessor has revalued the land or will revalue the land as non-residential property;
- can negotiate with a county commission or municipal council to establish an agreement that the public can use the land for hunting, fishing, hiking or other recreational uses;
- the recreational use is probably not confirmed with a conservation or recreational easement.

SIGNIFICANT ISSUES

This bill may have little or no effect in general, but could reverse the recent denial of agricultural special method valuation for the numerous properties throughout the state that no longer qualify as agricultural properties because they are not producing agricultural products. A number of other bills have been introduced in this session in response to the unified effort throughout the state by assessors to verify that all of the agricultural special method property on the tax rolls is still used for agricultural production. For example, there are approximately 2,000 agricultural special method properties in Santa Fe County. When the assessor surveyed these property owners, approximately 1,500 property owners could document the production and sale of agricultural products. But 25% of the agricultural properties were no longer productive and could face revaluation as non-residential properties, with a substantial increase in property tax obligations.

On the other hand, this new classification of recreational land might serve to assist in the effort to slow down the development of formerly agricultural properties. The lower property tax obligations might provide enough incentive to allow landowners to keep land in the family, even if the property were no longer productive as agricultural land.

To the extent that land that is currently classified as agricultural special method property jumps through the approval steps either with the legislature or the local county or municipality and becomes recreational special method property, the valuation would be the same as if the property retained the agricultural special value based on its agricultural productivity.

To the extent that “recreational” use of land affects its value, for example, if the landowner creates a permanent, or long term, easement that carries over to a subsequent owner, then the county assessor already has the ability to determine that change in value. However, land that is not currently valued as agricultural special method would not qualify for the recreational special method proposed in this bill.

This bill, as originally proposed, may be linked to the Natural Heritage Conservation Act (75-10 NMSA 1978) enacted in 2010. In that bill, conservation or agricultural easements can be created by landowners. One acceptable use of land under the Natural Heritage Conservation Act is for recreational use, including hunting and fishing. This bill may be trying to either extend or restrict the principles embodied in the Natural Heritage Conservation Act.

In some cases, landowners who create conservation, agricultural or recreational easements affecting their property may be eligible for a personal income tax credit. Thus, the property tax special method valuation proposed in this bill may be linked to the personal income tax credit provided in 7-2-18.10 NMSA 1978 enacted in 2007.

> Tax credit; certain conveyances of real property.
> A. There shall be allowed as a credit against the tax liability imposed by the Income Tax Act, an amount equal to fifty percent of the fair market value of land or interest in land that is conveyed for the purpose of open space, natural resource or biodiversity conservation, agricultural preservation or watershed or historic preservation as an unconditional donation in perpetuity by the landowner or taxpayer to a public or private conservation agency eligible to hold the land and interests therein for conservation or preservation purposes. The fair market value of qualified donations made pursuant to this section shall be substantiated by a "qualified appraisal" prepared by a "qualified appraiser", as those terms are defined under applicable federal laws and regulations governing charitable contributions.

Section 7-2-18.10, however, does not list “recreational” uses as eligible for the tax credit. Implicit in the premise of the conservation easement tax credit is a permanent change in the market value of the property with such an easement. Such a permanent easement is not required in this bill. If a permanent easement is created for recreational use and access, then the division and the county assessors could probably determine whether the property had experienced a permanent change in market value attributed to the restriction. There would probably not be any direct comparable sales of property sold subject to a conservation or recreational easement, but the property tax code provides a protest process. The protest boards could change the assessed value proposed by an assessor to reflect the board’s opinion on a change in market value of a property subject to a permanent recreational easement. However, if the easement were temporary or was not entailed in a deed covenant, then the protest board would probably not adjust the valuation.

TRD notes that this legislation apparently intends to establish a new “recreational,” class of land in the Property Tax Code. This type of land is already covered by the definition of “nonresidential” property at the beginning of the property tax code in section 7-35-2 NMSA 1978. This bill effectively calls for a special method of valuation for a classification that doesn’t exist.

Pursuant to the HWMC amendment, the bill gives some guidelines as to how the assessors would make a determination of value. The land will be valued as if it were agricultural land. The amendments make it clear that local County assessors would be responsible for valuing the recreational land using the identical guidelines prepared by the Property Tax Division for valuing

agricultural property.

TRD is skeptical that this process would be without problems: "The amendment now provides that the property will be valued in the same manner as agricultural land is valued. However, Section 7-36-20 NMSA 1978, which provides the special method of valuation for land used primarily for agricultural use, may create additional valuation challenges in attempting to adapt these agricultural specific use valuation methods to recreational land. In addition, this assignment is inconsistent with appraisal methodology. The use of recreational land is totally different than the use and purpose of agricultural land. Section 7-36-20 NMSA 1978 requires that evidence of bona fide primary agricultural use must be submitted by the property owner to demonstrate that the use of the land is primarily agricultural."

Rephrasing another comment from TRD, "… currently, there are values for grazing land, irrigated agricultural land and dryland agricultural land. In the absence of bona fide production, which of these values should the assessor choose as the one to apply in lieu of actual appraisal of the recreational land? At minimum, this will generate a large number of protests."

TRD also notes the following:

> "Allowing agricultural land to be reclassified as recreational land defeats the purpose of having a special method of valuation for agricultural land that is being used for the sole purpose of producing a product that is generating income for the owner of the property. This gives no incentive for the owner to continue using the land to produce an agricultural product."

TECHNICAL ISSUES

The HWMC amendments clarified that 'Governing Bodies' must be the elected body of a county or municipality having jurisdiction over the property. A Soil and Water Conservation District or a Conservation District could not approve an application for recreational special method.

However, the bill does provide that a landowner who is not approved for the recreational special method by the County assessor, backed up by the County Valuation Protest Board could, conceivably, lobby for approval from the legislature. This is probably an unnecessary provision. If a landowner is not approved for the recreational special method, the primary remedy would be to file a protest with the County Property Tax Protest board. If the denial is technical rather than substantive – for example if the property had not qualified as special agricultural method within the last three years – the assessor might propose a valuation as non-residential property that included the effect of the recreational or conservation restriction. Thus, retaining the provision that the state legislature could override this orderly process of protesting values may not be appropriate. LFC staff recommend reconsidering this point.

If recreational use changes and the landowner reports the change to the assessor in timely fashion, the landowner will pay 100% of the tax attributable to a reclassification to non-agricultural land for the taxable year following the conversion and thereafter. If the landowner fails to report the change, that landowner may pay a civil penalty equal to 25% of the difference between the amount of property tax owed as reclassified non-residential land and the amount of property tax paid. However, if the landowner never reports the change and the assessor has no particular means of determining that property ceased to be used as recreational property, there would be no civil penalty and no higher valuation. To be effective, the civil penalty should be 100% of the difference and should be applied every year from the date the property ceased to be used for rec-

reational purposes to the date the change was reported.

The AGO points out some technical issues that should be resolved:

> "The provisions in Sub-section A for the criteria establishing mandatory classification as recreational property are not specific and may lead to strife between various government entities. The property must be "used primarily for public recreational use," which implies a 51% standard. In the absence of definitions, common usage for what is the "public," and what is "recreational" would be employed by the courts in determining whether a particular parcel qualifies. "Recreational" encompasses a broad spectrum of activity, which, in the future, may not meet present understandings of its meaning."
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> "The property must be deemed recreational property by some governing body, Subsection (A)(2). Subsection H defines "governing body as "…the legislature or the elected body of a county or municipality." But Subsection A(2) and A(3) distinguish between "governing bodies" and state or local governments. The significance of the distinction is not clear, but there is the implication that they are not necessarily the same. One might expect litigation over whether county commission approval of a plat or development map containing land designated as common recreational areas constitutes the agreement contemplated in Subsection A(2), and if so, whether a state agency's agreement some years later meets the criteria of Subsection A(3)."
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> "As proposed, the penalty for failure to report a change in the use of the land so that it no longer qualifies as recreational property is de minimus, and unlikely to incentivize property owners to self-report changes in circumstance. At $25 or 25% of the underpaid tax, there is little reason to report the change. If the land reverts to agricultural use, there is no pecuniary incentive to self-report."
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> "There is no provision for retroactive revaluation in the event of a change of use, even if such met constitutional muster, or any provision establishing how far in the past the taxing authority may look in establishing the extent of penalties. There is also no provision specifying to what entity the penalties are due. There are no provisions for determining the consequences of a change in ownership or use in mid-year, although conceivably that could be addressed in the rule making contemplated in Subsection C."

TRD/PTD has similar issues with some of the provisions of this bill:

PERFORMANCE IMPLICATIONS

TRD/PTD reports the following:

> "PTD regards the administrative responsibilities of this legislation as highly burdensome due to past experience reviewing conservation easement appraisals. The rules that implementation of this legislation would require would have to comply with the Appraisal Foundation's Uniform Standards of Professional Appraisal Practice. The county assessor would have to reevaluate these properties between reappraisal cycles. While this is done for new construction, periodic reappraisal on existing properties is difficult to administer."

CONFLICT, COMPANIONS, DUPLICATES

HB-112 and SB-112 attempt to factor drought into the perpetuation of the agricultural special method for properties that are no longer producing agricultural products.

SB 330 is in conflict with this bill as well as SB 112 and HB 112, which are near duplicates. These latter bills expand the definition of "agricultural use" to include resting of land to maintain its capacity to produce agricultural products or to rest land used in the previous tax year for a purpose identified in Section 7-36-20 if the resting of land is concurrent with and a direct result of at least moderate drought conditions confirmed by the United States Department of Agriculture for the portion of the county within which the land is located. HB 112 and SB 112 also implicitly direct the County assessor to use the value derived the last time the land was used for agricultural production. The "last time" is indeterminate in these bills, and could extend as long as moderate drought conditions apply. SB 330, on the other hand, permit the alternative use to last only for three years and still have the alternative use qualify the land for the special agricultural method.

OTHER SUBSTANTIVE ISSUES

7-36-15 (C) NMSA 1978 provides as follows: "Dams, reservoirs, tanks, canals, irrigation wells, installed irrigation pumps, stock-watering wells and pumps, similar structures and equipment used for irrigation or stock-watering purposes, water rights and private roads shall not be valued separately from the land they serve. The foregoing improvements and rights shall be considered as appurtenances to the land they serve, and their value shall be included in the determination of value of the land."

LG/bb/je