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## FISCAL IMPACT REPORT

**SPONSOR** Gentry/Gonzales/ **ORIGINAL DATE** 2/1/18  
Wirth/Neville **LAST UPDATED** 2/5/18 **HB** 163

**SHORT TITLE** Unimproved Land Property Tax Valuation **SB** \_\_\_\_\_

**ANALYST** Amacher

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20		
	See Fiscal Implications	See Fiscal Implications	Recurring	Counties Property Tax
	See Fiscal Implications	See Fiscal Implications	Recurring	State General Obligation Bonds

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Undetermined	Undetermined		Recurring	See Fiscal Impacts

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Taxation & Revenue (TRD)  
 New Mexico Department of Agriculture (NMDA)  
 State Land Office (SLO)

#### No Responses Received From

Association of Counties (NMAC)  
 Department of Finance and Administration (DFA)

### SUMMARY

#### Synopsis of Bill

House Bill 163 creates a new section of the Property Tax Code for a special method of valuation

for unimproved land similar to one used primarily to conserve the unimproved land pursuant to a qualified conservation management plan. As proposed, this bill provides for a recapture of tax savings if the use of the land is changed; up to five years of property tax when subdivided or otherwise used for purposes not consistent with a conservation plan. Furthermore, HB 163 allows a county assessor to change a property tax schedule if there was a change of use of the land; provides a civil penalty, and amends disclosure laws and other conforming amendments.

If enacted, the effective date is May 16, 2018; however, the provisions of this act apply to the 2019 and subsequent property tax years.

## **FISCAL IMPLICATIONS**

The fiscal impact is indeterminate to the 33 counties property taxes as well as the state general obligation bonds. The Department of Taxation and Revenue (TRD) provides the following analysis:

The impact of the bill is highly dependent on how much land qualifies for the new special method, which is dependent on the rules set forth in section 1 of the bill (some of which appear to be in conflict, see technical issues below). In the most revenue negative interpretation (see Methodology – Detailed), nearly all vacant, unimproved land over 10 acres or with agricultural water could qualify for the new special method of valuation. The bill gives an incentive to use the new method of valuation when such land is currently valued using the current and correct method or most of the assessed value using the agricultural methods. Property Tax Division (PTD) estimates the current valuation of such land statewide at \$880 million. This figure is multiplied by the 95% reduction in value using the new special method. Applying an average taxable rate of 31.6 mills for nonresidential land to the result means that revaluing all this land according to the bill would result in an initial loss of property tax revenue to the counties of approximately \$25.3 million. Yield control and the debt service rate adjustments mean that property tax mill rates would then increase to make up for the loss. However, as 21 of 33 counties are currently at their maximum operating budget millage rates, some fraction of this loss would indeed be realized by the counties. Also, as 4.5 percent of property tax revenue goes to state general obligation bonds, there would be a corresponding loss of GO bond capacity.

The possibility that county revenue could increase, as the new valuation method defines a higher base than other special (typically agricultural) property valuation methods under current law, was also considered. However, the only way for this to happen is for the County Assessor or the property owner to identify a property as no longer being eligible for a lower special designation, or for the property owner to deliberately stop the (typically agricultural) activities that qualify for the special methods. TRD, however, cannot quantify the amount of property that would be reclassified in such a way.

**Methodology for Estimated Revenue Impact –  
Detailed discussion provided by TRD:**

Taxable NonAg Land Over Ten Acres	\$ 670,132,718	
Taxable Value All Ag Land	<u>\$ 212,243,636</u>	
Total	\$ 882,376,354	
Millage Rate Non Residential		<u>31.610</u>
Resulting Tax Revenue	\$ 27,891,917	
Proposed Valuation		5.0%
Resulting Tax Revenue	<u>\$ 1,394,596</u>	
Revenue Shift/Loss	\$ 26,497,321	
	\$ 25,304,942	
County Portion (shift/loss)		
State General Obligation Bonds		
Portion (shift/loss)	\$ 1,192,379	

**SIGNIFICANT ISSUES**

House Bill 163 creates a new category for the special method of valuation of land for the conservation of unimproved land and specifies how the new category of land shall be valued for tax purposes. Conforming amendments are also provided.

As proposed, new material is added to the New Mexico property laws, by providing a 5 percent valuation for unimproved land, which had previously been valued according to Chapter 7-36-20 NMSA 1978, in the previous year, and will subsequently be used primarily for conservation pursuant to a qualified conservation management plan. This is applicable to unimproved land that is 1) greater than ten acres, or 2) ten acres or less with a water right for agricultural purposes appurtenant to the land. A “qualified conservation management” plan is a ten-year land management plan developed in accordance with guidelines provided by the Soil and Water Conservation Commission. This bill provides for a recapture of up to five years of the property tax when subdivided or used for purposes inconsistent with the conservation plan, which at a minimum will either maintain or increase the productivity of the land, rangeland, watershed and forest health, wildlife habitat or soil and water conservation. If these conditions are satisfied, the value of the unimproved land is at 5 percent of the current and correct value.

In order to qualify for this special valuation, eligibility must be met and the land owner must apply to the county assessor within the appropriate time frame. As noted by the State Land Office (SLO), any change in ownership or use that results in a deviation from the qualified conservation management plan must be reported to the county assessor. A civil penalty applies if such report is not made. The land owner is responsible for the difference in taxes if he/she divides the land or builds improvements other than for agricultural or conservation use.

HB 163 allows for special procedures for administration of taxes on real property divided or combined, with the addition of a subsection that addresses the division of property taxed under the Chapter 7-36-20.1 NMSA 1978, with taxes, penalties, interest, and fees calculated in

accordance with such new section.

In addition, this bill grants the authority to make changes in the property tax schedule after its delivery to the county treasurer, adding an additional exception to allow for changes in the property tax schedule by the county assessor due to a change of use of land that had been valued pursuant to Chapter 7-36-20.1 NMSA 1978.

Furthermore, amendments are made regarding the disclosure of information required in certain real estate transactions. It removes the initial paragraph, which states that the legislature finds the property tax levied on residential property can be misleading for a purchaser. A section is then added requiring the seller's broker to request from the county assessor an estimate of the difference in property taxes with the election and without, and to provide a copy of the estimate to the prospective buyer.

If enacted, this legislation applies to the 2019 and subsequent property tax years.

### **PERFORMANCE IMPLICATIONS**

As noted by NMDA, the New Mexico soil and water conservation commission (SWCC) is a governor appointed board. NMDA provides administrative support to the SWCC. The SWCC does not have a separately appropriated budget. Therefore, NMDA provides staff and funding support for the SWCC to carry out its mandates. HB 163, states that a qualified conversation management plan means a ten-year plan management plan developed in accordance with guidelines provided by the SWCC. The establishment of guidelines would fall to the SWCC and therefore to NMDA staff.

TRD notes that county assessors and county treasurers would have a number of obligations as proposed in this bill, including: updating computers systems to accommodate an additional special method of valuation and land codes and processing applications for the new special method. The Property Tax Division would be required to develop additional training to address this new method of valuation.

### **ADMINISTRATIVE IMPLICATIONS**

There may be duplication of effort between TRD and the SWCC as noted by NMDA. The SWCC is administratively tied to the New Mexico State University. This may create a legal quagmire as to how the TRD would promulgate rules that the SWCC then must carry out.

### **TECHNICAL ISSUES**

NMDA points out there is no definition for "unimproved land". Additionally, incentives for land conservation already exist in statute in the Land Conservation Incentives Act (Chapter 75-9-1 NMSA 1978).

TRD notes there are several conflicts in the bill regarding valuing improved property. Section 1-A of this bill states that the property has to have been valued using an agricultural method in the previous property tax year but is no longer eligible, while Section 1-E states an owner can make an application for the new method "in a tax year immediately subsequent to a tax year in which the land was not valued under this section". As TRD mentions, if the latter is followed, even land valued at current and correct valuations would qualify, resulting in the most revenue negative

projections as noted in the Fiscal Impacts. Also, Section 1-B of this bill states that improvements to the land imply that the land is not used for conservation thus the new method of valuation is not applicable. In contrast, Section 1-D states that the value of improvements are just added to the new method of valuations for the rest of land. In general, improvements are contrary to conservation, TRD recommends that Section 1-D be removed.

Additionally, there is an issue with the liability defined for the recapture of property taxes. In Section 1-H of this bill, the liability for capture of up to five years of property taxes upon subdivision or other change in use becomes a *personal* liability. Making property taxes a personal liability is unusual and could result in the liability becoming unsecured.

## OTHER SUBSTANTIVE ISSUES

According to NMDA, subsection 1 requires that soil, water, wildlife, and vegetation inventories be conducted as part of a “qualified conservation management plan” these inventories require technical expertise and could be cost prohibitive to land owners.

NMDA asks, if land valued pursuant to Chapter 7-36-20 NMSA 1978, falls under the special valuation of unimproved land, would the owner still be able to graze livestock or otherwise put the land to productive use? What expertise will TRD use to establish whether a qualified conservation management plan will serve to, “at a minimum, maintain or increase productivity of the land, rangeland, watershed and forest health, wildlife habitat, or soil and water conservation.”

Furthermore, the NMDA notes that in addition to the several stipulated requirements in the rules that TRD would promulgate, it is also required that the rules include an annual implementation plan and periodic progress report certified by a person that meets qualifications established by the SWCC. The SWCC may not have the expertise to establish qualifications of this nature and the burden would fall to NMDA, which could require outside expertise and funds to hire the necessary experts to meet the requirements of both the statute and the rules once promulgated.

SLO notes that state trust lands are not subject to taxation, and thus there are no substantive issues as to the state land office. The impact of this bill will fall upon the county officials. A potential loss of property tax revenue or a shift in the tax burden will be experienced by the county and its residents.

TRD provides the following policy concerns:

Improper usage of special methods of valuation has been an issue statewide and is reportedly a serious problem in some counties. Assessors in several counties undertook revaluations in large part to address this concern and reportedly reclassified a significant number of properties. On the other hand, once properties are reclassified, property tax liabilities for those properties can increase significantly, especially as the complexion of surrounding parcels has changed to commercial or high-end residential property. The bill proposes a compromise solution by using a valuation of 5% of the full fair market value.

The mechanism for proper classification is via conservation management plans and progress reports, as given in sections 1-C and 1-I of the bill. The soil and water conservation commission is given authority to define the guidelines for the management plans as well as establishing qualifications for those persons who may certify the management plans. However the commission does not currently have any such

guidelines or qualifications in place, nor a plan to manage the qualified individuals. Because the bill does not define this authority nor contain an appropriation of funds to manage the authority, there is a possibility of insufficient review of individual management plans.

How one views the revenue impact of the proposal depends largely on the legitimacy of current special valuation methods (particularly agricultural ones) as many properties have become more mixed use. The bill could be viewed as revenue positive for the counties if one assumes that the bill would encourage more revaluation of current improper designations than would have happened. To the extent that properties would have been re-designated anyway, however, the bill is revenue negative. Ultimately, the County Assessors' view is imperative; the experience of the above-reported counties would suggest that many properties currently classified as agricultural are perhaps improperly classified.

Larger property tax policy issues need to be considered. First, New Mexico has one of the lowest property taxes nationally. Second, a large percentage of land within New Mexico cannot be subject to property taxation because it is owned by the federal, the state or tribal governments. In short, it is a relatively small tax base compared to other similarly sized states. Additionally, 23 counties have maxed out their millage rate with respect to overall operating budgets, and several have maxed out their nonresidential rates with respect to their school operating budgets. With this background in mind, counties may be concerned with revenue adequacy and moving non-productive agricultural land to its highest and best use. From the other perspective, landowners may raise concerns about the ability to retain land with the increase in taxes owed.

The bill may not help with the improper land classifications because of the lack of incentive and/or usage of penalties to the property owner to file for the new valuation method. Also, given return on investment under the proposed special valuation method, County Assessors may not be further incentivized to revalue improperly valued properties, as they would recuperate much less in terms of revenue with the proposed method than a fair market value approach. Additionally, counties that have recently revalued agricultural properties will be penalized, as many of those properties will now be eligible to significantly reduce their taxable value.

Indeed, the new valuation is low enough that it could frequently incentivize taking even irrigated agricultural land out of production.