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## FISCAL IMPACT REPORT

**SPONSOR** Gonzales **ORIGINAL DATE** 02/13/14  
**LAST UPDATED** 02/17/14 **HB** 301/a HAGC

**SHORT TITLE** Special Land Evaluation Method Extension **SB** \_\_\_\_\_

**ANALYST** Graeser

### REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16	FY17	FY18		
Minimal	Minimal	Minimal	Minimal	Minimal	Recurring	Property Tax Beneficiaries

Parenthesis ( ) indicate revenue decreases

LFC staff believes that, as amended, the bill provides a sufficient reason and procedure to render the proposal constitutional and in conformance to existing statute (although the regulations regarding special agricultural valuation would have to be changed). If enacted, the provisions of this bill would shift tax burden from the protected class of non-residential taxpayers to other non-residential taxpayers. Depending on the size and value of the few formerly agricultural properties affected by the provisions of this bill, the shifting to other non-residential taxpayers could range from trivial to monumental. However, this shifting could happen under current law, with, perhaps a different interpretation of statute than may have occurred.

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

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Minimal	Minimal	Minimal	Minimal	Recurring	County Assessors

Parenthesis ( ) indicate expenditure decreases

This is a very narrow class of taxpayers and the provisions of this bill could probably be implemented manually.

### RELATIONSHIP

SB 248 provides a durable 3 percent valuation limitation for formerly agricultural properties (Note: LFC and TRD believe that the provisions of SB 248 are unconstitutional.) HB 221 provides a property tax exemptions for certain lower-income elderly and HJR 14 seeks to provide the same property tax exemption via an enabling Constitutional amendment. HB 178 seeks to fix the “tax lightning” problem.

## **SOURCES OF INFORMATION**

LFC Files

### Responses Received From

Taxation and Revenue Department, Property Tax Division (TRD/PTD)

New Mexico Livestock Board (NMLB)

New Mexico Department of Agriculture (NMDA)

### Responses Not Received From

Attorney General's Office (AGO)

## **SUMMARY**

### Synopsis of Amendment

House Agriculture and Water Resources Committee (HAGC) amendment provides a rationale for the one-year extension of special agricultural valuation proposed in the original bill. If the USDA determines that drought conditions existed in the county during the previous year, then the county assessor is directed to extend special agricultural valuation to land formerly used primarily for agriculture until the drought has ended. The bill also requires an affidavit from the farmer or rancher that the agricultural use of the land will resume when the drought ceases.

### Synopsis of Original Bill

House Bill 301 amends the Property Tax Code to provide a one-year extension on the use of a special method of valuation for land that a county assessor determines is no longer being used primarily for agricultural purposes. If the use of the land primarily for agricultural purposes resumes during a subsequent taxable year, the owner of the land may submit an application to the county assessor for the special valuation method.

## **EFFECTIVE DATE**

Emergency clause; effective upon the Governor's signature. Applicable to the 2014 and subsequent property tax years.

## **FISCAL IMPLICATIONS**

In common with virtually all property tax bills the action of yield control and debt rate setting procedures would minimize any effect on property tax revenue beneficiaries. (See FIR for SB 148 of this session for further discussion of this point.) TRD explains it this way, "... the proposed legislation could cause a decrease in non-residential net taxable value statewide by granting tax relief to a non-agricultural property that is otherwise losing special method of valuation status. The decrease of net taxable value would result in an increase of property tax levies, excluding voter approved mill rates and the mill rates already limited by caps, to compensate for the loss in the base, shifting property tax obligations to other tax payers."

Although this bill does not affect property tax beneficiary revenues to any noticeable extent, it may be counter to the LFC tax policy principles of efficiency, equity and simplicity. A tax system with special exceptions, deductions, rebates, exemptions and abatements is a system that,

over time, fails to provide adequate revenue through non-compliance by non-advantaged taxpayers. On the other hand, the provisions of this bill can, perhaps, be viewed as improving fairness and assisting farmers and ranchers unduly disadvantaged by persistent drought to recover economically.

### **SIGNIFICANT ISSUES**

TRD is authorized in 7-36-20 NMSA 1978 to regulate the special valuation method for agricultural properties. TRD did an extensive regulatory effort in this area in 2009. One regulation on point required assessors to monitor the use of agricultural properties to ensure that there had been no change in use. Practically, this means that the change in use is probably not detected until harvest time in the fall of the taxable year. The assessor, having detected a change in use in the fall of the taxable year will not be able or likely to attempt to revalue the property until the following valuation cycle. This lag between change in use and change in valuation means that a farmer or rancher has up to 12 months (or more) to get back in the business of farming and ranching and retain the special agricultural valuation method. This bill addresses the problem of persistent drought, lasting for more than one year.

TRD points out a relatively minor, but persistent problem, "... this bill doesn't address properties that were erroneously awarded the special agricultural valuation method, or are no longer producing agricultural products. A property owner may have enjoyed the benefit of the special method for years, yet never used the land to produce agricultural products. If such a landowner has erroneously received the special method for the year immediately preceding a tax year, and an assessor has identified that the property does not qualify with a bona fide agricultural use, the bill requires the upward revaluation to be delayed for as long as drought conditions exist." Note: the bill requires a taxpayer file an affidavit attesting to that taxpayer's intention to resume farming or ranching when the drought eases.

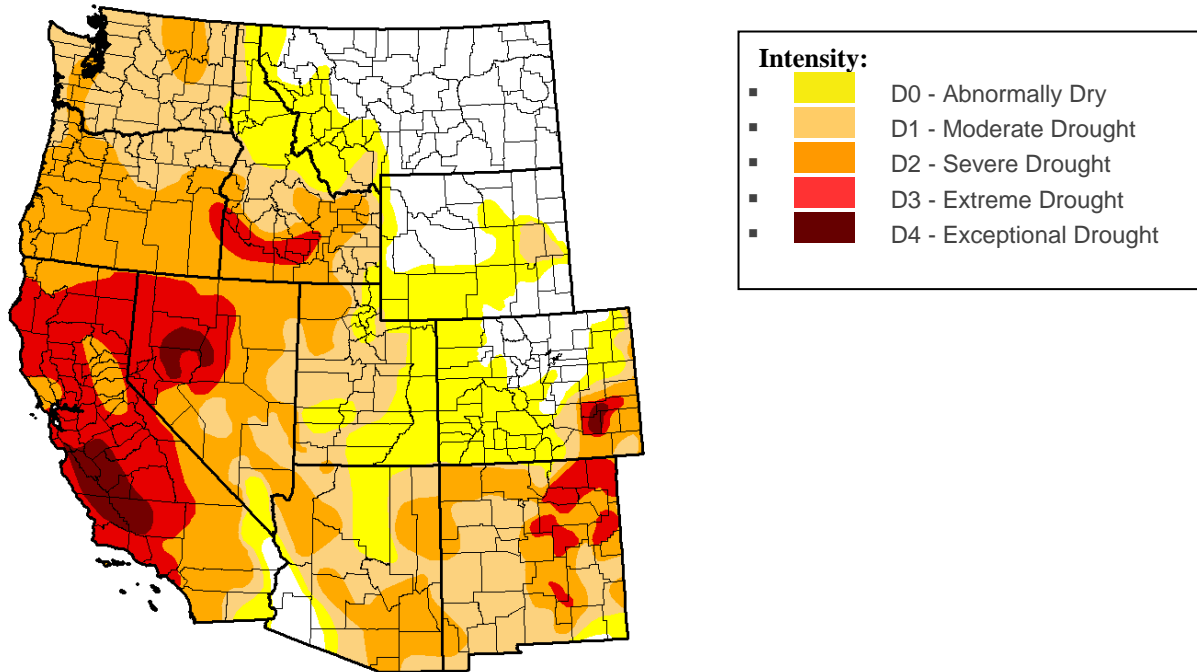
Pursuant to current law, Subsection H of Section 7-36-20 NMSA 1978 provides a fine for the greater of \$25.00 or 25 percent of the difference between property taxes determined to be due and the property taxes originally paid for the tax years for which the person failed to make a required report. (Enforcement of this fine has been lax.) In a year in which a taxpayer claims an entitlement to special agricultural valuation and the assessor determines that special valuation is not appropriate, the assessor would be entitled to impose this 25 percent fine. Pursuant to the provisions of this bill, there could be no penalty for this situation because the "property taxes determined to be due" would be those determined using the extra year of special valuation.

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As of February 15, 2014, 27 of New Mexico’s 33 Counties have been designated as federal Drought Disaster Areas.

Jan 15, 2014 Announcement		Feb 15, 2014 Announcement	
Directly Affected	Contiguous	Directly Affected	Contiguous
	Bernalillo		
Chaves			Chaves
Colfax			Colfax
Curry			
	DeBaca	DeBaca	
	Dona Ana		
Eddy			
Guadalupe			Guadalupe
	Harding	Harding	
	Lea		
Lincoln			Lincoln
	Los Alamos		Los Alamos
Mora			Mora
Otero			
Quay			Quay
	Rio Arriba	Rio Arriba	
Roosevelt			Roosevelt
	Sandoval		Sandoval
			San Juan
San Miguel			San Miguel
Santa Fe			Santa Fe
	Sierra		
	Socorro		
	Taos	Taos	
Torrance			
Union			Union
	Valencia		

Catron, Cibola, Luna, McKinley Grant and Hidalgo are not on the 2014 Drought Disaster list. Per the following map, however, all of these counties are experiencing “moderate drought” and portions of these counties are experience “severe drought.”



### PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is not met since TRD is not required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose.

### ADMINISTRATIVE IMPLICATIONS

TRD notes that county assessors and eligible taxpayers might have difficulty implementing the provisions of this bill for the current tax year. January 1 is the valuation or property tax lien date (Section 7-38-7). April 1 (Section 7-38-20) is the date by which county assessors are required to mail their Notices of Value to their taxpayers. On the other hand, this bill will probably affect only a handful of taxpayers, particularly in this initial year and implementation could be handled manually or resolved in the protest process.

### TECHNICAL ISSUES

The phrase, "... if the United States department of agriculture confirms that drought conditions existed in the county during the previous taxable years..." should be replaced with a more precise trigger phrase, "... if the United States department of agriculture has declared the county a drought disaster area or a drought disaster contiguous area during any portion of the previous taxable year..."

The statutory provisions for a special valuation method for land used primarily for agriculture is not an exemption from property tax, which would require a Constitutional Amendment, but a method of determining "current and correct" for this class of real property. The key is in the text of 7-36-20 NMSA 1978, "... the value of land used primarily for agricultural purposes shall be

determined on the basis of the land's capacity to produce agricultural products. Evidence of bona fide primary agricultural use of land for the tax year preceding the year for which determination is made of eligibility for the land to be valued under this section creates a presumption that the land is used primarily for agricultural purposes during the tax year in which the determination is made. If the land was valued under this section in one or more of the three tax years preceding the year in which the determination is made and the use of the land has not changed since the most recent valuation under this section, a presumption is created that the land continues to be entitled to that valuation.”

The purpose of this bill is to explicate how the highlighted rule should work in the case that a drought was the primary cause of the change of use of land from productive agricultural land to fallow land or vacant pasture. Obviously a strict reading of this highlighted text would focus on the phrase, “use of the land has not changed.” A less strict reading would focus on the rationale that a farmer or rancher was forced to sell the herd or leave land unplowed because of the persistent drought.

TRD points out some conflicts between the provisions of this bill and other portions of the Property Tax Code.

This legislation conflicts directly with Section 7-36-16 which requires county assessors to determine and maintain current and correct values. Maintaining current and correct values makes county assessors responsible for fixing mistakes in the assessment of their tax base regardless of the length of years specific properties were incorrectly assessed. This legislation allows properties that were incorrectly assessed previously to allow that error to persist as long as a the county were considered a drought area.

This legislation conflicts with Section 7-36-20 which requires evidence of bona fide and primary agricultural use as the criteria for the benefits of the special method of valuation.

This legislation conflicts with Section 7-36-20, Regulation 3 .6.5.27(B)(7) NMAC states, "When the owner of the land has not reported that the use of the land is no longer primarily for agricultural purposes but the county assessor has evidence sufficient to rebut the presumptions in Subsection A of Section 7-36-20 NMSA 1978, the county assessor must change the classification of the land." This legislation interferes with the statutory obligation to value property correctly and absolves property owners of the responsibility to report when they are no longer eligible for the Special Method of agricultural land valuation.

## ALTERNATIVES

Pursuant to recommendations of the Lincoln Land Institute, Massachusetts and, perhaps, other states provide for a five-year claw-back when properties that have benefitted from a special agricultural valuation are sold or cease being used for agricultural purposes.

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