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## FISCAL IMPACT REPORT

SPONSOR: Martinez DATE TYPED: 03/16/01 HB 794/aHCPAC/aHJC  
 SHORT TITLE: Possession of Property of Unknown Owner SB \_\_\_\_\_  
 ANALYST: Gonzales

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		See Narrative			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Office of the Attorney General

### SUMMARY

#### Synopsis of HJC Amendment

The House Judiciary Committee amendment 1) strikes the HCPAC amendments which changes wording from “possessing” to “occupying”; and 2) addresses the technical issue noted in the original bill analysis so a person pays any delinquent property taxes, penalties and interest due on the property for no more than 10 years and records his certified oath with the county clerk of the county or counties in which the real estate affected thereby is affected rather than the county assessor.

#### Synopsis of HCPAC Amendment

The House Consumer and Public Affairs Committee amendment changes wording proposed by the original bill to be more specific when referencing a person “occupying” property rather than “possessing” property. This amendment also requires a person to pay penalties and interest in addition to taxes due on the property for no more than the last 10 years when claiming title to occupied property.

#### Synopsis of Original Bill

House Bill 794 allows a person to claim title to property possessed exclusively for at least 25 years and the owner of the property is an “unknown owner.” A person would claim title to the property by taking a certified oath to attest to possession of the property, paying all delinquent property taxes due on the property and recording a certified oath with the county assessor. This bill also states the title to the property may not be disputed by another person if a lawful claim is not made on the property

within three years after the certified oath is recorded with the county assessor. The provisions of this bill would be effective July 1, 2001.

Significant Issues

The Office of the Attorney General notes the following:

This bill, if enacted, would substantially change the law of adverse possession as it has been developed in this state. Currently, as codified in § 37-1-22, a person claiming title to real property under the doctrine of adverse possession must make his claim under color of title, and be in open and notorious possession (which includes exclusive possession) of the property for 10 years prior to asserting his claim. Further, the limited notice provided by the filing of the oath in the assessor's office (or even in the county clerk's office, see Technical Issue below) may not be sufficient to withstand judicial scrutiny.

**CONFLICT**

This bill conflicts with the provisions governing adverse possession already codified at Section 37-1-22 NMSA 1978 to the extent that this bill authorizes another means of gaining title to real property and without color of title as noted by the Office of the Attorney General.

**TECHNICAL ISSUES**

To provide better notice to the public, documents relating to real property transactions are typically filed in the real estate records of the county clerk in which the property is located rather than the county assessor's office.

This proposal seems more properly placed in Chapter 47, Property Law.

**OTHER SUBSTANTIVE ISSUES**

Currently, the Property Tax Division of the Department of Taxation and Revenue is able to sell real property of unknown owners once taxes are delinquent for three years (allowing collection of the overdue taxes much sooner than under this bill), after giving the required notice of the sale. See Section 7-38-67 NMSA 1978. Further, a person in possession of real property can bid at the auction, or, if he has some legal claim to the property, he may file an action for quiet title, pursuant to § 42-6-1 NMSA 1978 et seq., which also requires notice designed to reach anyone who may also have legitimate claims to the property.

Therefore, the purpose of this proposed measure is unclear because if taxes are not paid on real property, the Property Tax Division of TRD researches title to the property and offers it for sale within about three years after the property taxes are unpaid. Therefore, for an individual to claim title to the property as allowed by the proposed statute, the individual would probably have been paying taxes on it for a period of 25 years. Hence, it thus seem extremely unlikely that significant amounts of real property of any significant value exist in New Mexico in which the owner is really unknown.

JMG/ar