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FISCAL IMPACT REPORT

SPONSOR: M.P. Garcia DATE TYPED: 02/06/03 HB 269

SHORT TITLE: Land Grant Bidding at Delinquent Tax Auctions SB _____

ANALYST: Geisler

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
		NFI	NFI	

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

State Land Office (SLO)
Attorney General (AGO)

SUMMARY

Synopsis of Bill

HB 269 would amend Section 7-38-67 NMSA 1978 of the Property Tax Code relating to the sale of real property by the Department of Taxation and Revenue (“TRD”) to collect delinquent real property taxes. HB 269 would define the “highest bid” at public auction to be any bid submitted by the “board of trustees of a community land grant” (“Board”) if: (1) the property is vacant and located within a land grant patent issued by the United States to a community land grant; (2) the bid covers all past taxes, penalties, interests and costs due (“minimum price”); (3) the Board agrees that the land will become part of the community land grant; and (4) if the Board resells the land within the life of any “heir to the land grant living at the time of purchase”. The Board agrees that all consideration received in excess of the Board’s bid, subject to certain adjustments, will be paid to the State. HB269 effectively allows boards of trustees of community land grants to purchase property for the statutory “minimum price”—even if higher bids are submitted at public auction.

Significant Issues

(1) HB269, if enacted as written, may constitute a “taking” of private property without compensation in violation of the Constitutions of the United States and New Mexico. Under current law, Section § 7-38-71(A)(4) gives the former property owner and others identified in a court order (such as mortgagees) the right to any tax sale proceeds collected in excess of the taxes, interest, penalty and costs due. HB269 does not amend this provision, but would reduce the proceeds received if the Board’s bid was lower than the actual highest bid.

(2) HB269, if enacted as written, may constitute a denial of Equal Protection of Law under the Constitutions of the United States and New Mexico, because it treats landowners differently based on whether their lands happen to be located within a community land grant. As discussed above, the property owner with lands inside a qualifying community land grant is arguably penalized by the proposed bidding process and by reducing the possible sale proceeds to the “minimum price”.

(3) HB269, if enacted as written, may constitute a “special law” in violation of the New Mexico Constitution, Art. IV, § 24, for the same reasons that it may violate the Equal Protection Clause.

ALTERNATIVES:

Instead of treating any minimum bid submitted by a “board of trustees of a community land grant” (“Board”) as the “highest bid”, grant the Board a “preference right” by allowing it to *match* the highest bid. This would substantially mitigate the constitutional issues and eliminate the need to monitor the status of the property for decades to come and to account for the proceeds of subsequent sales by the Board.

GGG/yr:sb