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FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/12

SPONSOR Griego LAST UPDATED _____ HB _____

SHORT TITLE Land Conservation Tax Credit SB 200

ANALYST Smith

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		
	300		Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total					Recurring	

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to
 Duplicates Appropriation in the General Appropriation Act
 Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

EMNRD

NO Response from TRD

SUMMARY

Synopsis of Bill

Senate Bill (SB 200) enacts a new section of the Income Tax Act and a new section of the Corporate Income and Franchise Tax Act to provide for a refundable tax credit for donations of land or interests in land for conservation purposes made on or after January 1, 2012; amends NMSA 1978, Sections 7-2A-8.9 and 7-2-18.10 to provide that they apply to donations of land or

interests in land for conservation purpose made before January 1, 2012; and amends the Land Conservation Incentives Act, NMSA 1978, Section 75-9-1 et seq. for donations made on or after January 1, 2012. SB 200 makes substantial changes to the existing income tax and corporate income and franchise tax credits for conveying land for conservation purposes for donations made on or after January 1, 2012. The overall result is to modify some of the provisions related to tax credits for conservation easements for tax years beginning in 2012.

SB 200 makes a number of changes to the provisions allowing tax credits for the donation of conservation easements. The changes tighten the availability of the credit for certain taxpayers. The changes also streamline the process of reviewing applications for the credits.

For donations made on or after January 1, 2012, SB 200 places a cap on the tax credit of the lesser of \$250,000 per conveyance or half the fair market value of the donated land or interest in land. Currently, pursuant to NMSA 1978, Sections 7-2-18.10 and 7-2A-8.9 the cap is half the value of the donated conservation easement or \$250,000 per taxpayer, whichever is less. Therefore, for example, if the conservation easement has a high value such as \$2,000,000 and there are four taxpayers that own the property a total credit of \$1,000,000 could be claimed. SB 200 would allow the tax credit to be claimed once every five years instead of every year to reduce the impact to the general fund.

Additionally, for donations made on or after January 1, 2012, SB 200 removes the provision that allows the tax credit to be sold and replaces it with a provision that makes the tax credit fully refundable to the taxpayer instead. The tax credit is currently transferable and the tax credits are sold through an intermediary. By making the tax credit refundable instead of transferrable the taxpayer would receive the full amount of the tax credit without having to pay a third party intermediary to sell the tax credit and without losing a portion of the tax credit because the purchaser generally pays less than 100 percent of the face value.

For donations made on or after January 1, 2012 the definition of taxpayer is changed to require that the applicant for a tax credit be subject to the Income Tax Act or Corporate Income and Franchise Tax Act instead of only having to own land or an interest in land in New Mexico that the applicant has donated for conservation purposes. Currently, under NMSA 1978, Sections 7-2-18.10 and 7-2A-8.9 those who reside out of state and are not subject to either act but own property in New Mexico can claim a transferable tax credit for donations.

Effective Date: January 1, 2012

FISCAL IMPLICATIONS

By capping the tax credit to the lesser of \$250,000 per conveyance (instead of per taxpayer) or half the fair market value of the donated land or interest in land, restricting those eligible for the tax credit to those that are subject to the Income Tax Act or the Corporate Income and Franchise Tax Act, and allowing a taxpayer to claim a tax credit once every fifth taxable year instead of one tax credit per taxable year the impact to the General Fund should be reduced.

Land (\$ in thousands)	Conservation		Tax		Credits
Year	Number of Land and Easement Donations by Private Landowners	Acres Conserved	Appraised Value of Land and Easement Donations	Amount of Tax Credit Issued by TRD	Tax Credits Claimed
Non-transferable Credit					
2004	6	5,801	\$4,083	\$501	\$0
2005	14	8,179	\$5,077	\$1,005	\$379
2006	11	1,312	\$3,338	\$798	\$217
2007	7	4,846	\$4,472	\$498	\$442
Transferable Credit					
2008	13	12,397	\$6,871	\$2,176	\$346
2009	5	5,567	\$4,183	\$1,274	\$1,338
2010	17	9,952	\$11,248	\$3,888	Not available
2011	11	6,314	\$5,371	\$2,654	Not available
Total	84	54,368	\$44,643	\$12,795	\$2,721

Source: New Mexico Energy, Minerals and Natural Resources Dept., Forestry Division

SIGNIFICANT ISSUES

For donations made on or after January 1, 2012 the definition of taxpayer is changed to require that the applicant for a tax credit be subject to the Income Tax Act or Corporate Income and Franchise Tax Act instead of only having to own land or an interest in land in New Mexico that the applicant has donated for conservation purposes. Currently, under NMSA 1978, Sections 7-2-18.10 and 7-2A-8.9 those who reside out of state and are not subject to either act but own property in New Mexico can claim a transferable tax credit for donations.

SB 200 requires that when applying for a tax credit for a donation of a fee interest in land made on or after January 1, 2012 that the property be encumbered by a conservation easement. This is needed to ensure that the conservation purposes of the donation are ensured in perpetuity.

For donations made on or after January 1, 2012, SB 200 a taxpayer would not be eligible for the tax credit if the taxpayer is or has been a subsidiary, partner manager, member, shareholder, or beneficiary of a domestic corporation or pass-through entity that owns or has owned the donated land in the five years preceding the date the taxpayer donated the land. In addition, to be eligible for the tax credit the taxpayer must be listed on the deed conveying the land or interest in land and have owned the land or interest in land for a minimum of five years before making the donation, unless they have inherited the land or interest in land. These provisions are intended to prevent individuals or entities from purchasing or transferring land or interests in land solely for the purpose of claiming the tax credit and are currently included in the rule implementing the Land Conservation Incentives Act.

PERFORMANCE IMPLICATIONS

SB 200 removes the requirement that EMNRD determine that the applicant for a tax credit has submitted a qualified appraisal. It replaces it with a provision that allows TRD, upon EMNRD's issuance of a certification of eligibility for a tax credit, to review the appraisal to determine if it is a qualified appraisal as defined by Internal Revenue Service regulations. This places the requirement for appraisal review with an agency, TRD, which has appraisers on staff and has appraisal expertise rather than EMNRD, which does not have appraisers or appraisal expertise. EMNRD would focus on its area of expertise, which is determining whether the donations have a significant conservation purpose. Currently, NMSA 1978, Sections 7-2-18.10 and 7-2A-8.9 require EMNRD to determine whether the taxpayer has submitted a qualified appraisal as defined by Internal Revenue Service regulations before it certifies that the taxpayer has made a donation that fulfills a conservation purpose. TRD is then required to make the same determination. Because EMNRD does not have appraisers on staff it has relied on TRD to make this determination. It would be more efficient for the agency that has appraisers on staff to receive the appraisals and have the authority to determine whether the taxpayer has submitted a qualified appraisal.

TECHNICAL ISSUES

Reference to at 26 C.F.R. Section 1.170A-14 may create a problem. First, neither the Department nor the Energy, Minerals and Natural Resources Department have any expertise in federal law. This will be particularly acute if the federal statute is amended.

OTHER SUBSTANTIVE ISSUES

Does the bill meet the Legislative Finance Committee tax policy principles?

Adequacy: Revenue should be adequate to fund needed government services.

Efficiency: Tax base should be as broad as possible and avoid excess reliance on one tax.

Equity: Different taxpayers should be treated fairly.

Simplicity: Collection should be simple and easily understood.

Accountability: Preferences should be easy to monitor and evaluate

SS/lj