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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/11/14

SPONSOR Cisneros & Gonzales LAST UPDATED HB

SHORT TITLE Agricultural Land Valuation SB 248

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

TRD/PTD and LFC believe that the provisions of this bill are unconstitutional, because they have not been approved by the voters and placed in the Constitution. See “Technical Issues” below. See “Fiscal Issues” below for a discussion of the effect on revenue beneficiaries of selective exemptions or limitations. Even if implemented, 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.

### 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

HB 301 provides a one-year extension of agricultural valuation for formerly agricultural properties and just for the year of determination. This one-year extension is possibly more acceptable constitutionally than SB 248. HB 221 provides a property tax exemptions for certain lower-income elderly and HJR 14 seeks 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)

## SUMMARY

### Synopsis of Bill

Senate Bill 248 amends the Property Tax Code to provide a limitation on increases in valuation for certain non-residential land that was previously used primarily for agricultural purposes. The proposal applies to land that was valued as agricultural property for at least nine of the ten tax years immediately preceding a tax year. The value of this land for tax purposes shall not exceed the higher of one hundred and three percent of its value two tax years before the tax year in which it is being valued or one hundred six and one-tenth percent of its value three tax years before the tax year in which it is being valued. Once the value of the formerly agricultural land is established in the year following sale, the value continues to be subject to a 3 percent annual increase until such time as the property is valued at current and correct.

### 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, were this proposal constitutional, 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 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.

It is probable that the limitation of this bill would affect only one taxpayer in the initial year. However, it would difficult to determine the identity of this single taxpayer or to estimate the amount of taxes this bill would save that taxpayer or the amount of property tax burden shifted to other non-residential taxpayers. The provisions of this bill establish a tax expenditure, since the normative property tax is equalized based on current and correct values.

### SIGNIFICANT ISSUES

In addition to the problem with constitutionality discussed below at "Technical Issues", TRD points out another 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 50 years, yet never used the land to produce agricultural products. If Section A is supported and a landowner has erroneously received the special method for nine of the ten tax years immediately preceding a tax year, and an assessor has identified that the property does not qualify with a bona fide

agricultural use, the value of the land shall not exceed the higher of 103 percent for two years preceding the tax year, or 106.1 percent for three years preceding the tax year. Perpetually rewarding taxpayers who, for whatever reason, weren't entitled to the benefits of a special method with the benefits of that method at the expense of other taxpayers who weren't lucky enough to be so classified as is can't be justified and erodes confidence in the taxation system.”

TRD also points out that, “ ... it isn't clear that this legislation adequately addresses the issue of future change of use or sale. The provisions of this subsection apply during the tax year before the tax year in which the land is being valued if there was no change of ownership or improvement covered in another section of the Property Tax Code. “

### **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.

There is no rationale offered in the bill as to why this semi-permanent valuation limitation for former agricultural properties is reasonable. In the most likely case, a farmer or rancher decides for one reason or another to retire and turn the ranch over to the next generation. The next generation decides to hold on to the property until it is ripe for development. The net effect of the provisions of this bill is to allow agricultural land to be withdrawn from production with no financial penalty or revaluation based on its highest and best use, which is likely to be for development.

### **ADMINISTRATIVE IMPLICATIONS**

TRD notes that county assessors and eligible taxpayers would 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.

### **TECHNICAL ISSUES**

The State Constitution prohibits the Legislature from enacting any law that provides for an exemption from property taxation for real property. Article VIII, Section 3 allows the Legislature to enact exemptions of personal property, but, by negative inference, not real property:

Sec. 3. [Tax-exempt property.]

...

Exemptions of **personal** property from ad valorem taxation may be provided by law if approved by a three-fourths majority vote of all the members elected to each house of the legislature.

All of the exceptions to uniform property taxation in New Mexico are enumerated in the Constitution at Article VIII, Section 5. The annotations are relevant:

All tangible property in New Mexico is subject to taxation in proportion to value, and should be taxed, unless specifically exempted by the constitution or by its authority. *Sims v. Vosburg*, 43 N.M. 255, 91 P.2d 434 (1939).

The phrase "taxes levied upon tangible property" as used in this section has same meaning as "taxes levied upon real or personal property" used in Section 2 of this article. *Hamilton v. Arch Hurley Conservancy Dist.*, 42 N.M. 86, 75 P.2d 707 (1938).

Classification of property generally. — The constitution in this section and sections 3 and 5 of this article, in effect, classes tangible property into that exempt from taxation, that which may be exempted and that which must be taxed. *State ex rel. Attorney Gen. v. State Tax Comm'n*, 40 N.M. 299, 58 P.2d 1204 (1936).

In 1998, the voters approved an amendment to Article VIII, Section 1 which mandated residential property tax limitation: "The legislature shall provide by law for the valuation of residential property for property taxation purposes in a manner that limits annual increases in valuation of residential property. The limitation may be applied to classes of residential property taxpayers based on owner-occupancy, age or income." This amendment enabled the 3 percent residential property tax limitation enacted in 2000. However, since the Constitutional amendment is clear that it applies only to residential property, it cannot be used as authority for this bill, which proposes to apply a 3 percent limitation to non-residential property.

There is a second provision of the State Constitution that has not been well tested in the courts in Article IV, Section 24. This section prohibits the legislature from passing, "...local or special laws in any of the following cases: ... remitting ... taxes; or ... exempting property from taxation...In every other case where a general law can be made applicable, no special law shall be enacted." The provisions of this bill might well apply only to one taxpayer, at least for the first year.

The annotations to Article IV, Section 24 follows: "To be a "general law," it is only necessary that the law be framed in general terms and operate on all objects of legislation distinguished by a reasonable classification." The proximate question is whether "property used for nine of the last ten years as agricultural property" is a reasonable classification and whether the provision of the bill that allows a limitation on valuation which could persist in perpetuity is reasonable."

In addition to confirming LFC's staff contention that the bill is likely unconstitutional, 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 for nine years to benefit from the error in perpetuity.

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 establishes a separate class of agriculture properties, namely those

that were benefited from the Special Method for nine years correctly or incorrectly. This conflicts with Article VIII Section 1 A of the New Mexico Constitution which requires that “taxes shall be equal and uniform upon subjects of taxation of the same class” by establishing a nine year class and allowing properties outside of the legitimate agricultural class to enjoy the benefits of bona fide agricultural land.

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

HB 301 provides a one-year extension of agricultural valuation for formerly agricultural properties and just for the year of determination. This one-year extension is possibly more acceptable constitutionally than SB 248. The issue is largely whether the taxpayer voluntarily reported the change in use or if the county assessor determined the change in use.

## WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

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

1. **Adequacy:** Revenue should be adequate to fund needed government services.
2. **Efficiency:** Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity:** Different taxpayers should be treated fairly.
4. **Simplicity:** Collection should be simple and easily understood.
5. **Accountability:** Preferences should be easy to monitor and evaluate