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## FISCAL IMPACT REPORT

ORIGINAL DATE 3/2/15

SPONSOR HWMC LAST UPDATED \_\_\_\_\_ HB 112/HWMCS

SHORT TITLE Define Agricultural Use for Property Tax SB \_\_\_\_\_

ANALYST Graeser

### REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17	FY18	FY19		
		*	*	*	Recurring	Property tax beneficiaries (operating)
		**	**	**	Recurring	Property tax beneficiaries (debt)
		*	*	*	Recurring	Property taxpayers (operating)
		**	**	**	Recurring	Property taxpayers (debt)

(Parenthesis ( ) indicate revenue decreases)

[\*] The primary property tax beneficiaries (counties, school districts, municipalities, special districts, hospitals) will probably not experience a reduction of operating revenue, nor will they experience an increase in operating revenue from the recently implemented changes in requirements for the special method. See “Fiscal Implications” below.

[\*\*] The primary property tax beneficiaries (counties, school districts, municipalities, special districts, hospitals) will not probably not experience a reduction of debt revenue, nor will they experience an increase in debt revenue from the recently implemented changes in requirements for the special method. DFA’s rate setting process will shift the tax burden for debt rates from the advantaged taxpayers to the disadvantaged taxpayers. See “Fiscal Implications” below.

CS/HB 112 is a duplicate of CS/CS/SB 112. SB 330 permits land to remain fallow for a maximum of three years.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

- Attorney General’s Office (AGO)
- Taxation and Revenue Department (TRD)
- Economic Development Department (EDD)
- Department of Administration and Finance (DFA)

## SUMMARY

### Synopsis of Bill

House Ways and Means Committee substitute for House Bill 112 expands the existing definition of the term “agricultural use” for the purpose of making property tax valuations. Lands designated as agricultural use lands are currently eligible to be valued on the basis of the land’s capacity to produce agricultural products. This bill expands Section 7-36-20 NMSA 1978 to include within the definition of “agricultural use” resting of land to maintain its capacity to produce agricultural products or to rest land used in the previous tax year for a purpose identified in Section 7-36-20 if the resting of land is concurrent with and a direct result of at least moderate drought conditions confirmed by the United States Department of Agriculture. The moderate drought must have occurred for eight consecutive weeks during the previous taxable year in the county within which the land is located. If HB112 is enacted, land used for these purposes would fall within that category of lands eligible to be valued as an agricultural use land.

The provisions of the bill apply to the 2016 and subsequent property tax years. (Note: first payments for the 2016 property tax year are due in November 2016.)

## FISCAL IMPLICATIONS

The primary fiscal effect of this bill will be to shift property taxes from quasi-agricultural producers to non-agricultural taxpayers for both operating and debt rates. This bill will not affect farmers and ranchers that continue using land for agricultural production or who maintain their land so that it can be used for agricultural production. The yield control formula adjusts the operating rates to changes in the tax base. The debt rates are calculated by DFA/Local Government Division and adjust to changes in the tax base. There will be some fiscal effects in some communities, but because this bill largely confirms current practice of the County Assessors, there will be very little revenue impact. The provisions of the bill may serve to reduce the increases in both operating and debt revenues induced by a redetermination of some existing agricultural special method property. The only taxpayers that will benefit from the provisions of the bill are those that have been unable to convince the County assessors that their land is suitable for and capable of producing agriculture products.

This bill expands a tax expenditure and may be counter to the LFC tax policy principles of adequacy, efficiency, accountability and equity. However, the revenue impacts will be modest.

## SIGNIFICANT ISSUES

TRD points out that this bill largely confirms current practice. County Assessors take into account weather and drought in determining a land's *capacity to produce agricultural products*. Further, the statute requires evidence of bona fide primary agricultural use. The provisions of the bill will essentially remove the ability of the County Assessor to determine when agricultural land is resting to maintain its production capacity and when it has been abandoned for agricultural production.

This bill establishes clear criteria for the expansion of the agricultural special method of valuation. The agricultural special valuation method proposed in this bill requires successive tests in order to qualify land for the agricultural special valuation. The target land must:

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- be used for the production of agricultural products (conventionally defined); or
- be rested (fallowed) pursuant to an agreement with a soil and water conservation district that is accompanied by a soil conservation payment; or
- be rested (fallowed) not pursuant to an agreement with the soil and water conservation district accompanied by a payment, to maintain its capacity to produce agricultural products. The determination of this step is apparently left to the landowner and assessor; or
- be rested (fallowed) without agreement between landowner and assessor, and with the additional requirements that the land be rested as a direct result of at least moderate drought condition (D1-D4) occurring for eight consecutive weeks somewhere in the county in which the land is located during the previous taxable year and that the land must have been used the previous year for one of the test uses (actual use, resting pursuant to agreement and payment, resting to maintain agricultural productivity with agreement between landowner and assessor, or resting of land because of moderate drought the previous year.

The only landowners that will benefit from the provisions of this bill are those that have been unable to convince a County Assessor or the County Valuation Protest Board that the subject land is suitable for and capable of agricultural production. If the landowner has made attempts to maintain the ancillary structures, the regulations clearly indicate that these activities sustain the case for the agricultural special method.

Indirectly, by including “livestock” as agricultural products, and noting that horses are livestock, this bill could expand the agricultural special method to land used for pasturing recreational horses. This is within the constitutional premise that the value of agricultural land is not necessarily based on the actual use but that the land is suitable for and capable of agricultural production.

This substitute bill adequately addresses the previous LFC staff comment that the previous provisions would be hard to administer because the drought map changes daily and changes within the boundaries of the County. The current map is included at the end of this report, with a summary table reproduced here:

Week	Date	None	D0-D4 Dry	D1-D4 Moderate	D2-D4 Severe	D3-D4 Extreme	D4 Exceptional
Current	<a href="#">2015-02-03</a>	14.13	85.87	61.54	26.01	3.70	0.00
Last Week	<a href="#">2015-01-27</a>	12.01	87.99	64.71	29.29	3.70	0.00
3 Months Ago	<a href="#">2014-11-04</a>	17.28	82.72	62.64	27.80	1.53	0.00
Start of Calendar Year	<a href="#">2014-12-30</a>	12.01	87.99	65.38	29.10	3.70	0.00
Start of Water Year	<a href="#">2014-09-30</a>	16.70	83.30	62.57	30.04	8.08	0.00
One Year Ago	<a href="#">2014-02-04</a>	0.41	99.59	96.09	48.44	12.93	0.00

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Currently, about 26 percent of the state’s land area is in at least severe drought conditions and over 60 percent of the state is in at least moderate drought. One year ago, about 48 percent of the state’s land area was experiencing at least severe drought and 96 percent was experiencing at least moderate drought.

A companion problem is that, constitutionally, the agricultural exemption must be based on the agricultural productivity of the land. Two requirements must be met:

- the farmer or rancher must maintain ancillary structures, such as acequias, ponds, wells and shelters and must do whatever is necessary to preserve water rights under the “use it or lose it” doctrine; and
- there must be a definite limited duration of time between actual agricultural production and the valuation of land based on the capacity to produce agricultural products.

This bill does not ensure either of these conditions obtain. In fact, the analysis above indicates that the only landowners that can benefit from the provisions of this bill are those that cannot show to the satisfaction of the County Assessor that the land is suitable for and capable of agricultural production.

TRD/PTD notes the following, “Both drought and weather are considered by County Assessors. Assessors judge eligibility for the special agricultural method considering specific property attributes and conditions. If a property isn’t producing crops or other agricultural products, but the farmers or ranchers have maintained their land and drainage ditches, they won’t lose their agricultural taxation status.”

### 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

The inclusion of consideration of drought conditions poses a time-consuming, but possible, administrative burden on assessors. County by county, Assessors’ staff will have to download the drought map from <http://droughtmonitor.unl.edu/Home/StateDroughtMonitor.aspx?NM> weekly. Then the staff would have to determine if any portion of the County were in at least drought conditions. Once at least eight consecutive weeks of drought conditions obtained anywhere in the County, the staff would have to annotate the valuation records and extend the agricultural special method valuation to properties that have been valued in that fashion to previous year. It would still be up to the Assessor and staff to determine when land that had been historically used for farming or ranching but that had been effectively abandoned for the purpose should be reclassified. This bill would allow a landowner to protest and, effectively, perpetuate the lower agricultural valuation even if the land had been abandoned.

TRD would have to revise the published rules and, probably, expand protest hearing responsibilities as a result.

**OTHER SUBSTANTIVE ISSUES**

DFA notes that, “...during the drought, from 2007 to 2012, according to the U.S. Department of Agriculture, farmland that was non-irrigated increased from about 29.7 to 34.9 million acres in the state, out of about 43.2 million acres of farmland. That represents about 5 percent of existing farmland at risk of nonagricultural use on an irrigation basis.”

DFA also notes that other states handle this issue in different ways:

“In Texas, Tax Code Section 23.522 provides that the eligibility of land for open space appraisal does not end because the land ceases to be devoted principally to agricultural use to the degree of intensity generally accepted in the area if:

1. a drought declared by the Governor creates an agricultural necessity to extend the normal time the land remains out of agricultural production; and
2. the owner intends to resume the use the land in the manner and to the degree of intensity at the end of the declared drought.”

TRD has provided some interesting statistics:

	<u>2012</u>	<u>2007</u>
Number of Farms	24,721	20,930
Land in Farms	43,201,023	43,238,049
Farm Acres Lost	37,026	
Percentage Lost	0.09 percent	
	<u>2012</u>	<u>2007</u>
Irrigated Farms	11,430	10,167
Land in Farms	8,308,583	13,362,070
Farm Acres Lost	5,053,487	
Percentage Lost	60.82 percent	
	<u>2012</u>	<u>2007</u>
Non-Irrigated Farms	13,291	10,763
Land in Farms	34,892,440	29,875,979
Farm Acres Gained	5,016,461	Gained
Percentage Gained	14.38 percent	Gained

TRD notes the following:

“In Taos, where enforcement of the statute has resulted in the loss of unjustified agricultural status in some instances, residents are reclaiming agricultural land and preparing it for legitimate agricultural use. This is the reason the statute was instituted and the regulations were reworked in 2009 to take as many factors affecting agricultural uses into consideration. Agricultural uses should continue to be encouraged in this way.”

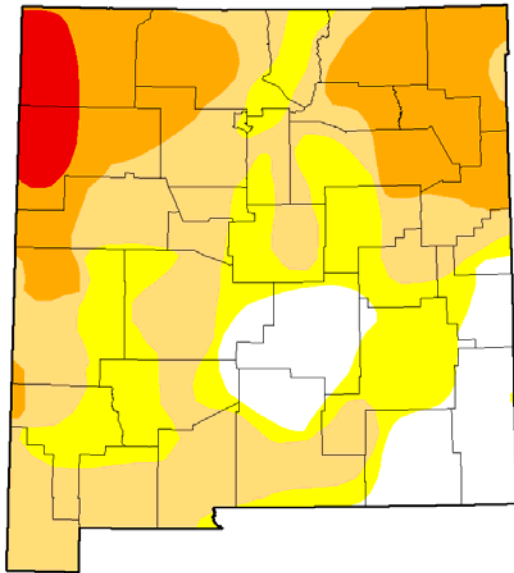
“This legislation expands the grounds for eligibility for the special method of agricultural land valuation. In some respects, this bill attempts to continue the work of the last legislation session’s unsuccessful SB 248 and HB 301. Those bills probably violated the New Mexico Consti-

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tution by providing property tax exemptions by statute. The legislature is permitted to change the tax base for tangible personal property, but not real property.”

“There may be some argument that HB 112 improperly expands a special method of assessing land based on its productive capacity, not its “highest and best use.” Resting land to maintain its capacity to produce agricultural products is probably constitutionally valid. However, the resting of land because of, at least, moderate drought is problematic. What happens if the drought continues for years? What happens if the land is eventually sold for development without ever again being used for agricultural purposes?”

LG/bb/aml



Intensity:	
•	D0 - Abnormally Dry
•	D1 - Moderate Drought
•	D2 - Severe Drought
•	D3 - Extreme Drought
•	D4 - Exceptional Drought

## February 3, 2015

(Released Thursday February 5, 2015)

Valid 7 a.m. EST

[Statistics type:](#)
 Traditional (D0-D4, D1-D4, etc.)
  Categorical (D0, D1, etc.)

Drought Condition (Percent Area):

Week	Date	None	D0-D4	D1-D4	D2-D4	D3-D4	D4
Current	<a href="#">2015-02-03</a>	14.13	85.87	61.54	26.01	3.70	0.00
Last Week	<a href="#">2015-01-27</a>	12.01	87.99	64.71	29.29	3.70	0.00
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Population Affected by Drought: **1,437,769**

[View More Statistics](#)

<http://droughtmonitor.unl.edu/Home/StateDroughtMonitor.aspx?NM>

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[View More Statistics](#)

The Drought Monitor focuses on broad-scale conditions. Local conditions may vary. See accompanying [text summary](#) for forecast statements.

### Author(s):

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