

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

## FISCAL IMPACT REPORT

**LAST UPDATED** \_\_\_\_\_  
**ORIGINAL DATE** 3/2/23

**SPONSOR** Gonzales

**BILL**  
**NUMBER** Senate Bill 394

**SHORT TITLE** Conserved Unimproved Land Valuation

**ANALYST** Graeser

### APPROPRIATION\* (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
	5,000.0	Nonrecurring	General Fund

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent version of this legislation.

### REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25	FY26	FY27		
				Indeterminate but Minimal	Recurring	General Obligation Bonds Yield
				See Fiscal Implications	Recurring	State General Obligation Bond Capacity
		Up to (\$88,000.0)	Up to (\$92,100.0)	Up to (\$96,300.0)	Recurring	County, Municipal, School District, Special District operating and debt revenues shifts
				See Fiscal Implication	Recurring	County, Municipal, School District, Special District GOB capacity

Parenthesis ( ) indicate revenue decreases.

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		1,000.0	1,000.0	Recurring	EMNRD/General Fund
		50.0	50.0	Recurring	NMDA

Parenthesis ( ) indicate expenditure decreases.

### Sources of Information

LFC Files

#### Responses Received From

New Mexico Office of Natural Resources Trustee (ONRT)  
 New Mexico Department of Agriculture (NMDA)

Department of Finance and Administration/Local Government Division (DFA/LGD)  
Energy, Minerals and Natural Resources (EMNRD)  
Office of the State Engineer (OSE)  
State Land Office (SLO)

No Response Received

Taxation and Revenue Department (TRD)

## SUMMARY

### Synopsis of Senate Bill 394

Senate Bill 394 creates a special method of valuation for unimproved land that has been set aside for conservation purposes pursuant to a qualified management plan. Properties that meet the qualifications outlined in SB394 would be valued at 25 percent of the taxable value. This is 1/12<sup>th</sup> of the current and correct (assessed) value of the land.

The bill makes a \$5 million appropriation from the general fund to the Department of Finance and Administration Local Government Division in FY24 to purchase or upgrade software for computer-assisted mass appraisal systems to carry out the provisions of the bill. Any unused funds will revert to the general fund at the end of FY24.

SB394 requires that a qualifying management plan must maintain or increase the productivity of the land, rangeland, watershed and forest health, wildlife habitat, or conservation of soil and water and must implement accepted best management practices that

- Maintain and improve soil, forest and rangeland health, vegetative cover, riparian buffers, stream health and wetlands;
- Reduce soil and wind erosion;
- Control noxious weeds;
- Reduce hazardous fuels and risk of flooding;
- Maintain and improve wildlife habitat;
- Conserve surface and groundwater and water quality; or
- Maintain acequia infrastructure.

Those qualifying management plans must be approved by one of the following:

- Energy, Minerals and Natural Resources Department;
- Environment Department;
- Department of Game and Fish;
- New Mexico Department of Agriculture; or
- A soil and water conservation district.

To be eligible for the special method of valuation, a property must

- Be unimproved;
- Remain unimproved for the period of the valuation;
- Have been valued as agricultural property pursuant to Section 7-36-20 NMSA 1978 in the immediately preceding five property tax years but is no longer eligible to be valued pursuant to that section; and

- Be greater than 10 acres but no more than 160 acres or 10 acres or less with a water right for agricultural purposes appurtenant to the land and permitted by the office of the State Engineer.

SB394 requires the landowner to claim and apply to the county assessor to receive the special valuation. To maintain the special valuation, the landowner must reapply in the tax year following a change of use or ownership and six years following the tax year in which the last application was made and granted. The landowner shall report to the county assessor whenever a change in ownership or land use results in the property losing its qualification. The landowner at the time is personally liable for the difference between the conservation use valuation and the current and correct value of the property if any ineligible improvements occur.

SB394 directs TRD to promulgate rules in consultation with the Energy, Minerals, and Natural Resource Department (EMNRD) and NMDA for determining whether land should qualify as primarily used for conservation. These rules shall, among other provisions mentioned above, require the landowner to submit a report of compliance with the qualified management plan to a qualified agency in the third and sixth year following enrollment to maintain special valuation renewal eligibility.

Senate Bill 394 appropriates \$5 million from the general fund to the Local Government Division of the Department of Finance and Administration for expenditure in fiscal year 2024 to purchase or upgrade software for computer-assisted mass appraisal systems. Any unexpended or unencumbered balance remaining at the end of fiscal year 2024 shall revert to the general fund.

This bill does not contain an effective date, and as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed. The provisions are applicable for property tax years beginning January 1, 2024.

## **FISCAL IMPLICATIONS**

This bill creates or expands a tax expenditure with a cost that is difficult to determine but likely significant. LFC has serious concerns about the significant risk to state and local revenues from tax expenditures and the increase in revenue volatility from erosion of the revenue base.

Estimating the cost of tax expenditures is difficult. The provisions of this bill are primarily addressing property taxes on land that was formerly accorded the agricultural valuation of 7-36-20 NMSA 1978, but for whatever reason is no longer agriculturally productive. This could be because of drought, retirement of the rancher, or other reason. There will be no certain information on uptake of this provision. Once this tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of the new valuation provisions.

LFC staff note a concern the “25 percent of the taxable value” special method of valuation vacant land used for agricultural or conservation purposes may be unconstitutional without an authorizing constitutional amendment to Article VIII, Section 1, of the New Mexico Constitution. However, if that concern is not validated and the provisions are enacted into law, potential negative effects are as follows:

- A worst-case scenario is calculated by TRD (see below);

- Yield control applicable to certain mill rates pursuant to Section 7-37-7.1 NMSA 1978 and debt mill levy rate adjustments would likely increase mill levies to make up for decreases in property valuations as a result of this new special valuation method. This means the tax burden would shift to other taxpayers that do not qualify for the new special valuation method.
- State general obligation bond (GOB) capacity, limited to 1 percent of assessed value (Article I, Section 8, New Mexico Constitution), would decrease by the difference between 100 percent of current and correct value for land affected by the provisions of this bill and 25 percent of taxable value (1/12<sup>th</sup> of current and correct). In aggregate, this valuation reduction would proportionally reduce bond capacity. As a general rule of thumb, a 1 percent reduction in available revenues would create a 5 percent reduction in total bond capacity. This is unlikely to be significant because the state has never approached this 1 percent limit.
- Municipal and county GOB capacity, which is limited to 4 percent of assessed value (Article IX, Section 13, New Mexico Constitution), and school district general obligation bond capacity, limited to 6 percent of assessed value (Article IX, Section 11, New Mexico Constitution), would decrease. For some jurisdictions, this reduction could be significant.

For the similar House Bill 332 from 2019, TRD estimated impacts as follows:

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21	FY22	FY23		
			Indeterminate but Minimal		Recurring	General Obligation Bonds Yield
			See Fiscal Implications		Recurring	State General Obligation Bond Capacity
		(\$22,000.0)	(\$23,100.0)	(\$24,300.0)	Recurring	County, Municipal, School District, Special District operating and debt revenues shifts
			See Fiscal Implication		Recurring	County, Municipal, School District, Special District GOB capacity

However, that bill proposed a conservation valuation of 25 percent of the current and correct value. This bill proposes a conservation valuation of 25 percent of the net taxable value. This is 1/12<sup>th</sup> of the current and correct value. The revenue table indicates a maximum impact of four times the amount shown in the table from 2019.

The 2019 analysis may be considered an absolute maximum of possible impacts:

TRD/LGD has prepared the following analysis of possible fiscal consequences of the provisions of this bill ... This analysis assumes that all nonresidential land over 10 acres would become eligible for this special method. The analysis further assumes land over 160 acres would be subdivided and subsequently become eligible for this special valuation method. The analysis also assumes properties that have lost their agricultural special method would be reincorporated in the tax abatement that this proposed legislation implies. The 105 percent eligibility (note 1) reincorporates the properties that had their agricultural special method removed. The analysis also assumes that 25 percent of current and correct would provide a lesser valuation than 100 percent of current and correct as agricultural land.

Methodology for Estimated Revenue Impact		
Revenue Shift/Loss Method		
Taxable Non Ag Land Over Ten Acres	\$670,132,718	
Taxable Value All Ag Land	\$212,243,636	
Total Value	\$882,376,354	
Estimated Percentage Affected	105.0%	Note 1
Resulting Land Taxable Value	\$926,495,172	
Millage Rate Non Residential	31.553	
Existing Property Tax Revenue	\$29,233,702	
Proposed Valuation Ratio	25.0%	
Resulting Tax Revenue Per HB0332	\$(7,308,426)	
Revenue Shift/Loss Per HB0332	\$21,925,277	
Non Residential Taxable Value	\$212,243,636	
Non Residential Revenue	\$566,212,130	
Revenue Loss/Shift Per HB0332	\$21,925,277	
Revenue Loss / Shift %	3.9%	
Note 1: Includes Agricultural Removals which equate to 5% Non Res Land		

EMNRD expects a quite substantial impact from the provisions of this bill:

SB394 does not include funding for EMNRD to support the rulemaking, or the preparation or review of management plans, nor for inspections for compliance with the management plans. EMNRD estimates approximately \$1 million each fiscal year in recurring general fund would be needed to effectively carry out the provisions of SB394. This estimate of annual funding need includes eight new full time permanent staff and vehicles, equipment, office space, and additional administrative support for those staff to comprehensively carry out the provisions of SB394—provisions that include determining land use, developing or reviewing management plans, and performing inspections to assure compliance across approximately 25 million acres of private land in New Mexico.

Other agencies involved report relatively small administrative impacts:

Fiscal impact to NMDA would involve staff time and travel to participate in rulemaking processes. The responsibilities of being a qualified agency would also involve staff time to review plans, although at this time the extent of the reviews is unknown. NMDA conservatively estimates the work to require at .25 FTE at approximately \$25.0 per year plus travel to support the agency mandates in SB394.

## SIGNIFICANT ISSUES

NMDA reports the following:

SB394 would require NMDA involvement in two implementing actions for the conservation use special tax valuation:

- NMDA would assist the TRD in developing a rule for determining whether land is primarily used for the conservation of unimproved land, including the criteria for qualified management plans.
- As a qualified agency, NMDA would be tasked with receiving and approving qualified management plans from landowner applicants. NMDA would also receive and review management plan compliance reports from landowners in the third and sixth year following initial enrollment.

Given the long list of qualified agencies tasked with approving management plans,

the rule governing this process would need to be specifically crafted to ensure that uniform standards are applied.

The soil and water conservation districts are listed as a qualified agency for approving management plans and compliance reports. There are 47 soil and water conservation districts around the state and their technical and administrative capacity varies greatly. For some districts, it will be difficult to fulfill these responsibilities without additional financial support.

SB394 could have the unintended consequence of removing some land from agricultural production. Landowners may find conservation use a more attractive option to reduce their tax burden, depending on personal circumstances and the difference between valuation for agricultural productivity under Section 7-36-20 NMSA 1978 and valuation for conservation use under SB394. This could have downstream revenue impacts to state and local governments, as agricultural products contribute revenue through other taxes.

Pursuant to House Memorial 81 (2019 regular legislative session), the secretary of Taxation and Revenue convened a Rural Heritage Task Force (RHTF) to evaluate New Mexico's approach to taxing lands that are no longer in agricultural production and are not residential or developed lands. As requested in House Memorial 81, the RHTF included representatives from the Office of the Governor, Office of the Lt. Governor, New Mexico Department of Agriculture, Energy, Minerals and Natural Resources Department, New Mexico Acequia Association, New Mexico Association of Conservation Districts, New Mexico Counties and assessors affiliate, Western Landowners Alliance, New Mexico Cattle Growers' Association, New Mexico Farm and Livestock Bureau, New Mexico State University, and other relevant interested stakeholders. In summary, the participants in the RHTF did not find consensus as to whether a change in the current property tax system is warranted at this time or what such a change should entail. It was generally agreed that more data is needed to make informed analysis and decisions. Outside the property tax structure, the group also discussed and found support for alternatives to a conservation use special valuation, such as an idea to create a mechanism similar to the Low-Income Property Tax Rebate (LIPTR) currently found in Section 7-2-14.3 NMSA 1978. Text of the final task force report can be found at:

<https://www.nmlegis.gov/handouts/RSTP%20121719%20Item%203%20Final%20Report%20of%20Rural%20Heritage%20Task%20Force.pdf>.”

A companion paper titled *Western States Agricultural Property Tax Comparison* prepared for this HM81 study is available at: <https://pubs.nmsu.edu/specialty/lpc/LPC5/index.html>

Continuing the discussion broached in the “Fiscal Implications” above, EMNRD reports the following:

SB394 would require EMNRD to assist with, or entirely prepare, management plans for private landowners with general fund dollars. This would conflict with the anti-donation clause of the New Mexico Constitution.

Each management plan would require an approximate minimum time commitment of

seven working days for one Forestry Division staff member in order to adequately develop and complete. The steps to create a management plan include meeting with the landowner; assessing the property; conducting a forest inventory; drafting the plan; and incorporating cultural reviews, wildlife considerations, threatened and endangered plant and animal considerations, water resources, soil attributes, forest health, and other environmental objectives for the conserved undeveloped land. Development of management plans for larger acreages will require significant time and effort. Private consultants could, if paid by landowners, prepare the management plans, and that would narrow the responsibilities of the Forestry Division to reviewing and qualifying the management plans.

At current staffing levels, the Forestry Division has a waiting list for private landowner management plans of several months to years. These plans are funded with a limited amount of available federal funding (which avoids the anti-donation clause issue identified above). Many times, the private landowner must choose between these long wait times or paying for the development of a plan for their property on their own. Consulting foresters typically charge \$10,000 to \$20,000 for a plan, depending on the size of property and complexity of the landowner's conservation objectives.

A simple way to reduce the workload of preparing management plans would be to accept the Natural Resource Conservation Service's management plan template as a qualified plan template. However, SB394 does not include a provision that would clearly allow the state to accept a federal agency plan template as a substitute for a plan developed by a qualified agency as defined in the Act.

SLO notes a policy implication:

State trust land agricultural (grazing) leases are often held by the operators of adjacent ranches. The bill would incentivize those ranchers to cease ranching and convert their land from grazing to conservation use. In that case, they would no longer need grazing leases on state trust, resulting in relinquishment of those leases and reduced income to the state trust beneficiaries. Moreover, the former ranchers would have less incentive to sell their private land holdings for replacement active ranching operations, which could affect the ability of NMSLO to re-lease those trust lands for agricultural use.

## PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is not met because 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 alternative value other information to determine whether the alternative valuation is meeting its purpose. Property tax assessments are performed by the 33 county assessors and the data on the various classes of exemptions or alternative valuations are difficult to obtain. These data are not reported in the *Tax Expenditure Report*.

EMNRD notes: "Without additional funding, SB394 would divert existing staff and resources from carrying out forest and watershed restoration projects to preparing, reviewing, qualifying and inspecting management plans with appropriated state funding."

## **ADMINISTRATIVE IMPLICATIONS**

EMNRD's Forestry Division does not have the administrative capacity to support the implementation of SB394 without additional FTE and resources.

EMNRD and NMDA report SB394 would create an administrative burden that may require FTE and appropriation increases.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB394 relates to SB393, which would modify the agricultural use special valuation by broadening the definition of agricultural use to include enrollment in a natural resource's conservation programs under an agreement with a state or federal agency. It is possible that some properties would qualify for both the expanded agricultural use special valuation under SB393 and the conservation special valuation under SB394.

SB394 contains most of the provisions from HB332 of the 2019 session.

## **TECHNICAL ISSUES**

LFC staff note a concern: The "25 percent of the taxable value" special method of valuation vacant land used for agricultural or conservation purposes may be unconstitutional without an authorizing constitutional amendment to Article VIII, Section 1, of the New Mexico Constitution.

TRD/Property Tax Division supervises the local assessors. The \$5 million to upgrade to computer mass appraisal software is appropriated to the Local Government Division of DFA. DFA/LGD approves the budgets for the counties, but the Property Tax Division of TRD would be the better agency to supervise and allot the appropriation. Many counties already have certified mass appraisals. The best use for the appropriation would be to allot money to the smaller rural counties that might be fiscally damaged by the new valuation method implicit in the provisions of this act.

Section 1(E)(2) requires reapplication six years following the tax year in which the last application was made. However, Section 1(A) requires the land to have had an agricultural valuation in the preceding five property tax years. These sections may be in conflict if the intent is to allow the conservation valuation to remain as long as the management plan remains effective and that it is not necessary on reapplication to show the previous agricultural valuation.

Section 1(B) indicates that any improvements on land, other than the defined conservation improvements listed in 7-36-15 NMSA 1978 create a presumption the land is not used primarily to conserve the unimproved land. Section D requires any improvements on land (except the 7-36-15 NMSA 1978 features) be separately valued and added to the conservation valuation. This may be similar to the agricultural valuation where a defined acreage that may include a house, barn, or other out buildings is excluded and separately assessed and the value added to the agricultural valuation applied to the remainder of the land.



EMNRD notes: “The list of accepted best management practices starting on page 3, line 4 and ending at line 11 requires that all the best practices be included with the ‘and’ on line 10. ‘Or’ would be more appropriate since not all lands have conditions requiring all of the best management practices.”

OSE notes a possible conflict with current statute:

The allowance of this reduction on parcels of less than 10 acres is limited in Paragraph A to those “with a water right for agricultural purposes appurtenant to the land and permitted by the office of the state engineer.” Water rights appurtenant to the land are typically called “irrigation” rights rather than “agricultural” rights, and though many of those rights are under permit, some were appropriated before state engineer jurisdiction was established and have never been transferred. These are valid rights, but they do not have a state engineer permit. A possible change to the language to address this problem would be to allow for the reduction on parcels :with a valid water right for irrigation purposes.” It is redundant to specify that these rights be appurtenant to the land, because Sec. 72-5-23 already so provides.

Both the surface water forfeiture statute, Section 72-5-28, and the groundwater forfeiture statute, Sec. 72-12-8, provide that land put into a “state engineer approved water conservation program” are protected from statutory forfeiture. Those programs are distinct from the conservation programs described in this bill, but the effect of possible confusion of those two types of conservation program should be considered.

At page 2, lines 6-8, replace “water right for agricultural purposes appurtenant to the land and permitted by the office of the state engineer” with “a valid water right for irrigation purposes.”

## OTHER SUBSTANTIVE ISSUES

Section 7-36-15(C) NMSA 1978, referred to in the provisions of the bill, provides the following: Dams, reservoirs, tanks, canals, irrigation wells, installed irrigation pumps, stock-watering wells and pumps, similar structures and equipment used for irrigation or stock-watering purposes, water rights and private roads shall not be valued separately from the land they serve. The foregoing improvements and rights shall be considered as appurtenances to the land they serve, and their value shall be included in the determination of value of the land.

From the review of 2019 HB332, TRD Property Tax Division pointed out a perhaps unintended consequence of this proposal:

This will likely result in a decline in agricultural uses. If the tax incentive for agricultural uses is eliminated, there will likely be an increase in water rights consolidation and land banking. The supply of available land suitable for agriculture will diminish. To the extent that landowners are subject to normal risk and labor minimizing commercial motivations, the character of New Mexico will shift from an agricultural/ranching state to a hunting state.

HB332 is written for 10-160 acres (one quarter section) properties. There is every reason to believe that sophisticated landowners will subdivide or combine their lots to gain the maximum benefit from the legislation.

Despite protections to agricultural special method holders including the right to rest and land, moderate drought protections and placing the burden of proof on the assessors, many of our assessors performed the hard work of removing agricultural special methods from properties that didn't maintain their fences, irrigation ditches or keep the properties free from invasive species. This legislation renders their work an ineffective and politically costly wasted effort. This is a harmful precedent for enforcement of the Property Tax Code.

The New Mexico average agricultural land value, per the NMDA property tax comparison study listed above was \$521 per acre and varied between \$331 in Guadalupe County to \$2,759 per acre in Bernalillo County. Applying the 1/3<sup>rd</sup> valuation ratio and an approximate average non-residential property tax rate, agricultural land would generate about \$5.22 per acre without the agricultural exemption and, typically, \$1.50 per acre or less with the agricultural exemption. As explained below, in addition to the valuation of the acreage, ranchers also pay personal property tax at the local rate based on scheduled valuations per animal unit. Cropland would be assessed based on the value of the produce and could be quite a bit higher. The proposal here would be for conservation valuation to be 25 percent of net taxable value. This would yield an annual tax of about \$1.25 per acre, and this would not be enhanced by the personal property tax on the value of the animals.

Agricultural valuation is, in large part, based on tables of carrying capacity of livestock published annually by TRD. The following is the link to the values applicable for the 2022 taxable year.

[https://www.tax.newmexico.gov/businesses/wp-content/uploads/sites/4/2022/04/PTD-Order-No-21-33-2022-Livestock-Values\\_ps\\_sc.pdf](https://www.tax.newmexico.gov/businesses/wp-content/uploads/sites/4/2022/04/PTD-Order-No-21-33-2022-Livestock-Values_ps_sc.pdf)

Example: Chaves County Class A grazing land has a carrying capacity of 10 animal units per section. To determine the “taxable value” per acre of Class A grazing land in Chaves County, 10 is multiplied by 15 cents. The product of this multiplication is \$1.50 and \$1.50 is the “taxable value” per acre for Class A grazing land in Chaves County.

In this example, the minimum acreage to qualify for agricultural valuation is based on these tables. In the example, it would take 64 acres to feed one animal unit (one cow-calf pair or five sheep or goats). In addition to the minimal taxable value per acre, ranchers also pay property taxes on the value of livestock. These values are also shown in the annual publication.

Valuation of crop land is based on documented value of produce.

This report also notes that 31 percent of all land in New Mexico is owned by the federal government; an additional 12 percent is state land; 13 percent is “miscellaneous land” (which by inference is Indian nation, tribe, band, or pueblo land). Private land is about 46 percent of the total. The report then notes this conservation valuation proposal may not be necessary in most areas of the state because the 54 percent of federal, state, and Indian land will largely remain protected for all time.

## **POSSIBLE QUESTIONS**

**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

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

1. **Vetted:** The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.
2. **Targeted:** The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals.
3. **Transparent:** The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies.
4. **Accountable:** The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date.
5. **Effective:** The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions “but for” the existence of the tax expenditure.
6. **Efficient:** The tax expenditure is the most cost-effective way to achieve the desired results.

LG/al/hg