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FISCAL IMPACT REPORT

ORIGINAL DATE 02/10/10

SPONSOR Neville LAST UPDATED _____ HB _____

SHORT TITLE State Board of Equalization SB 272

ANALYST Lucero

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	\$75.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)
Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

Senate Bill 272 appropriates seventy-five thousand dollars (\$75,000) from the general fund to Taxation and Revenue Department (TRD) for the necessary expenses of the board of equalization.

The bill proposes to add a new section to the Property Tax Code to create the "Board of Equalization" which is administratively attached to the TRD. Staff shall be provided by TRD. The Board shall sit as a quasi-judicial body to "resolve tax inequities that arise in districts with authority to impose property taxes or authorize a county to impose property taxes for the benefit of the district when the district is located in multiple counties."

The Board shall have five members, appointed by the governor, by and with the advice and consent of the senate. The governor shall appoint one member to be the chair of the Board, who may serve as chair for up to two years at the pleasure of the governor. The terms of members of the Board shall be for six years from January 1 following the date of appointment, except that of the members first appointed, including one member who shall be appointed for a term of two years and may be reappointed to serve one additional term of six years and two members who shall be appointed to serve four-year terms but shall not be appointed to serve additional terms.

All members of the Board shall have knowledge of valuation and appraisal practices and shall have additional qualifications to provide the Board with expertise to evaluate complex valuation situations that occur in districts that cross counties lines.

Members of the Board shall receive no wage, salary, perquisite or allowance for service on the Board but shall receive per diem and mileage pursuant to the Per Diem and Mileage Act.

The Board shall meet at the call of the chair, but not less than quarterly, to review the results of protests decided in the prior tax year to determine trends that indicate inequities and other questions of equity.

The bill provides that the inequities to be reviewed by the Board shall be property tax rate or valuation inequities that are perceived to distribute the tax burden unfairly between taxpayers in a district due to the valuation practices within the varying counties in which the district is located. The Board shall review data regarding the values of properties in the district, determining the inequities present and formulating a result that equalizes the values of properties concerned and adjusting the rates accordingly. The Board may subpoena witnesses and documents as necessary to gather the information necessary to review a question before it. Hearings shall be conducted by the Board as a panel. Transcripts of proceedings of the Board shall be posted on the Board's web site. A copy of the orders generated from the hearings held by the Board shall be distributed to the parties to the complaint within twenty days of issuance of the order. A party required to take action pursuant to an order of the Board shall take effect for the tax year beginning January 1 following the date of issuance of the order.

FISCAL IMPLICATIONS

The appropriation of seventy-five thousand dollars (\$75,000) contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2011 shall revert to the general fund.

SIGNIFICANT ISSUES

The Taxation and Revenue Department (TRD) reports that the provisions contained in the bill may create a layer of authority between the County Valuation Protest Boards or Departmental Hearing Officers and the District Courts. The Board would perform functions that are currently performed by the Property Tax Division, TRD Hearing Office and DFA Local Government Division. Representatives of the Property Tax Division consistently discuss issues with taxpayers that are filing legal action against TRD, and reach settlements without council and without authority to direct the admissibility of evidence or scope of discussions. Assessors perform similar activities during informal protest conferences with taxpayers. Many of these functions would be performed by the Board of Equalization as a result of the proposed measure. State boards of equalization perform a number of functions pertaining to property and other taxes. The Wyoming Board of Equalization, for example, primarily adjudicates disputes between taxpayers and the Wyoming Department of Revenue and appeals from decisions of county boards of equalization that function in much the same manner as protest boards in New Mexico¹. The Wyoming Board of Equalization also engages in many activities that are done by the Taxation and Revenue Department's Property Tax Division – evaluating county assessors, for example. The “equalization function” thus consists of insuring that appeals are fairly adjudicated and that assessors engage in accurate assessment practices. Some boards of

equalization, California, for example, collect sales taxes and perform many administrative tasks that are similar to that of the New Mexico Taxation and Revenue Department.

The Attorney General’s Office (AGO) reports that the bill establishes a “Board of Equalization” and appears to provide the Board with the power to modify tax rates or property valuations which are “perceived” to distribute the tax burden unfairly between taxpayers in a district encompassing multiple counties due to the valuation practices within the counties in which the district is located. Those districts may include special hospital districts (see NMSA sections 4-48A-1 et seq.); college districts (see NMSA sections 21-2A-1 et seq.); flood control districts (see NMSA sections 72-18-1 et seq.) and others. The bill appears to allow the new board to override property valuations and tax rates which are established by districts, by counties on behalf of districts, and the Secretary of Finance and Administration if it perceives that those valuations or rates are inequitable or unfairly distribute the tax burden among taxpayers within those districts after it reviews the results of property tax valuation or rate protests. The bill therefore appears to give the new board the authority to act on its own, without request of any taxpayer, to overturn protest decisions made by hearing officers in accordance with the Property Tax Code.

The bill does not restrict the board’s authority to lowering tax valuations. It appears to give the board the authority to increase property valuation for tax purposes and to order the payment of additional taxes by certain taxpayers if it determines that their property was unfairly valued.

The bill appears to allow the new board to intervene in, modify, or overturn protest decisions regardless of whether a decision has been appealed. See NMAC 3.6.7.37 providing for appeals of county valuation protest board decisions.

The bill would require a “party”, which presumably could include a taxpayer, county assessor or a district, to comply with an order of the Board effective for the tax year beginning January 1 following the date of issuance of the order.

However, the bill does not amend or modify existing state laws setting forth protest procedures when a taxpayer disputes property valuation or applicable tax rates and it is unclear how this bill and existing property tax administration and protest procedures set forth in the Property Tax Code and special district laws will relate to each other or conflict.

TECHNICAL ISSUES

The bill does not define the terms “district” or “property taxes”. It may be interpreted as not applying to associations or authorities such as Water User’s Associations or Solid Waste Authorities; or to “assessments” imposed by a district, even if those assessments are based upon property valuation. See, for example, NMSA Section 73-20-46 allowing a soil and water conservation district to impose an “assessment” against real property within that district.

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¹ taxappeals.state.wy.us/Strat%20plan%2007%20Rev.doc. See also <http://www.tennessee.gov/comptroller/sb/sbappeal.htm> for a description of the Tennessee Board of Equalization, and <http://www.sboe.state.az.us/> for a description of the Arizona Board of Equalization. A description of the Nevada Board of Equalization may be found at: http://tax.state.nv.us/DOAS_SBOE_New.html.