

LFC Requester:	Graser, Laird
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**AGENCY BILL ANALYSIS
2014 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

And

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date February 17, 2014
Bill No: HB301-305 Feb 17

Sponsor: Reps. R. Gonzales, C. Cisneros **Reviewing** Attorney General's Office
Short Special Land Valuation Method **Person Writing** Mary H. Smith
Title: Extension **Phone:** 222 9093 **Email** msmith@nmag.gov

SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHADED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act:

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to:

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s committee’s or legislator’s request.

BILL SUMMARY

Summary Synopsis: The House Agriculture and Water Resources Committee amendment to HB 301 replaced Section 1’s proposed new paragraph H with substitute language that provides for an extension of an indeterminate length for the valuation of real property that has previously been valued and taxed as property used primarily for agricultural purposes. This extension would apply to such land that is no longer being used primarily for agricultural purposes, but is located in a county for which the US Department of Agriculture (“USDA”) has confirmed that drought conditions existed during the previous taxable year. The owner of such property must submit an affidavit stating his or her intent to resume primary use of the land for agricultural purposes once drought conditions have ceased or any sooner time upon which the land may be so used.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

None for the AGO.

SIGNIFICANT LEGAL ISSUES

The February 13, 2014 FIR for HB 301 expressed the opinions of both the NM Legislative Finance Committee and the NM Taxation and Revenue Department’s Property Tax Division that the original language of Section 1’s paragraph H was an unconstitutional enactment of an exemption from real property taxation, and was thus violative of Article VIII, Sections 3 and 5, Article IV, Section 24 and Article VIII, Section 1(A) of the New Mexico Constitution.

The HAGC amendment to HB 301 would now provide a special valuation method for property that has previously been valued and taxed as land used primarily for agricultural purposes, but which now is not so used and is located in a county for which the USDA has declared that drought conditions existed during the previous taxable year.

While the USDA may declare that drought conditions exist in a specific “county,” it may be possible that not all lands within that county are experiencing a drought such that they cannot be used primarily for agricultural purposes. The HAGC amendment to HB 301 does not appear to allow a county assessor to determine the correct and current value of each specific property within his or her county. This situation could result in inequitable property valuations and may allow for agricultural exemptions for properties not entitled to such.

As with HB 301, the HAGC amendment still appears to be a violation of Article IV, Section 24

of the New Mexico Constitution because it enacts a local or special law that provides for the assessment and collection of taxes in a particular county, and exempts from taxation as non-agricultural property certain land that was previously used primarily for agricultural purposes in a county based solely on the existence of drought conditions in that county.

As with HB 301, the HAGC amendment still appears to conflict with NMSA 1978, Section 7-36-16(A)'s mandate that a county assessor determine and maintain "current and correct values" for all property located within his or her county. While NMSA 1978, Section 7-36-20(A) requires evidence of "bona fide primary agricultural use of land" for the previous tax year, if that land was not used primarily for agricultural purposes simply because drought conditions existed in the county, the threshold of "agricultural use" as defined in Section 7-36-20(B) may not be met so as to justify an agricultural exemption for the following tax year. Arguably, during a drought, certain lands may not be used primarily for the agricultural purposes defined by this statute.

Currently, NMSA 1978, Section 7-36-20(D)(4) requires the NM Taxation and Revenue Department to "adopt rules for determining the value of land used primarily for agricultural purposes," which rules shall provide for the "consideration of determinations of any other governmental agency concerning the capacity of the same or similar lands to produce agricultural products." This suggests that the Department's rules could address those situations anticipated by the HAGC amendment that allow the USDA's drought declarations to be considered by the NM Taxation and Revenue Department and county assessors in determining the current and correct valuation of lands put to agricultural use.

Thus, rather than a legislative enactment of what could be an unconstitutional special or local law under Article IV, Section 24 of the New Mexico Constitution, the NM Taxation and Revenue Department could adopt administrative rules that address the issue of determining the value of land used, or no longer used, primarily for agricultural purposes.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

None for the AGO.

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

None for the AGO.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

The February 13, 2014 FIR for HB 301 identifies: SB 248, HB 221, HJR 14 and HB 178.

TECHNICAL ISSUES OR DRAFTING ERROR

None.

OTHER SUBSTANTIVE LEGAL ISSUES

None.

ALTERNATIVES TO ENACTING THIS BILL

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo; real property that has been valued and taxed as land used primarily for agricultural purposes will continue to be subject to the statutory requirements of NMSA 1978, Sections 7-36-16 and 7-36-20 that mandate a county assessor to determine and maintain current and correct property values and to ensure that property owners provide evidence of bona fide and primary agricultural use so as to be entitled to the special method of valuation for land used primarily for agricultural purposes.

AMENDMENTS NEEDED TO IMPROVE THIS BILL

None.