

LFC Requester:	Laird Graeser
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

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{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 January 24, 2015
Bill No: HB 141

Sponsor: Rep. Patricia A. Lundstrom
Short Title: Public Recreation Land Special Valuation

Agency Code: Attorney General's Office-305
Person Writing: James C. Jacobsen, A.A.G.
Phone: 222-9085 **Email:** jjacobsen@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		
N/A			

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
N/A				

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	N/A					

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: U
Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

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

BILL SUMMARY

Synopsis: House Bill 141 would direct the Taxation and Revenue Department (“Department”) to create a special method of valuation for land classified as “Recreational Property”. Section A defines recreational property as land: primarily used for public recreational use; which has been deemed recreational property by a governing body; access to which is made available to the public pursuant to an agreement between the land owner and either a state or local government; and for which the owner has applied, under oath, to the county assessor for special valuation using the form and providing the information to justify the valuation required by the Department.

Sub-section C directs the Department to promulgate rules for determining whether land is used primarily for recreational purposes and requires the Department to determine how to value land so classified.

Sub-section B provides that once granted, the recreational property classification is presumed for future years.

Sub-section F requires the land owner to report if the use of the land no longer meets the criteria for the classification. Sub-section G provides a civil penalty of \$25.00 or 25% of the difference between the amount of property tax owed as non-recreational property and what was assessed, whichever is greater, for failure to notify the assessor that the land no longer should be classified as recreational.

FISCAL IMPLICATIONS

There is no reason for the proposed special method of valuation if the value for tax purposes of land classified as recreational property does not differ from that of similar land not so classified. The value of land to which the public has a right of access is not likely to exceed the value of similar land from which the public may be lawfully excluded. The revenues of political entities receiving ad valorem tax revenues will be affected, possibly resulting in increased mil rates for other tax payers to recover the difference.

SIGNIFICANT ISSUES

As proposed, the Bill provides no guidance to the Taxation and Revenue Department as to how the Legislature intends for its implementation. In general, §7-36-15, NMSA 1978 specifies the methods by which assessors are to value property: comparable sales; income; cost,

or some combination thereof using generally accepted appraisal techniques. Where it has previously provided for special methods of valuation, the Legislature has specified the means, e.g. : §7-36-20, NMSA, land used primarily for agricultural purposes shall be valued on the basis of the land's capacity to produce agricultural products; §7-36-23 through §7-36-25, NMSA, mineral properties valued at various percentages of annual net production value; §7-36-32, commercial gasoline engine propeller driven aircraft shall be valued at 10% of the original cost, regardless of age.

The Bill as proposed leaves the determination of methods and procedures, and valuation, solely to the discretion of the Taxation and Revenue Department. There are likely significant variations in land values between that used for hiking or equestrian activity between publicly owned parcels, subdivision land designated as parkland but not accepted as public land by the local government, and land used as an exotic game ranch, and no indication how the Legislature intends for those differences to be recognized.

As proposed, the penalty for failure to report a change in the use of the land so that it no longer qualifies as recreational property is de minimus, and unlikely to incentivize property owners to self-report changes in circumstance. There is no provision for retroactive revaluation, even if such met constitutional muster, or any provision establishing how far in the past the taxing authority may look in establishing the extent of penalties. There is also no provision specifying to what entity the penalties are payable, and no provisions for determining the consequences of a change in ownership or use in mid-year.

The provisions in Sub-section A for the criteria establishing mandatory classification as recreational property are not specific and may lead to conflict between various government entities. The property must be “used primarily for public recreational use”, which implies a 51% standard. In the absence of definitions, courts would have to resolve what is public, and what is recreational, in determining whether a particular parcel qualifies. “Recreational” encompasses a broad spectrum of activities, not all of which may meet conventional current understandings of meaning.

The property must be deemed recreational property by some governing body, Subsection (A)(2). The criteria for what constitutes a governing body is amorphous—it conceivably could be a homeowner's or neighborhood association, since the following sub-section clearly differentiates *government* bodies as distinct from *governing* bodies. The property must be subject to an agreement in effect between the owner and a state or local government. One might expect litigation, for example, over whether county approval of a plat map containing land designated as common areas constitutes such an agreement. The Taxation and Revenue Department is directed in Sub-section C to promulgate rules for implementing the special valuation, but in the absence of any legislative criteria, any regulations are subject to attack as arbitrary or capricious, or an unlawful delegation of the taxing authority held by the Legislature to the Executive branch.

PERFORMANCE IMPLICATIONS

There are no performance implications for this Office.

ADMINISTRATIVE IMPLICATIONS

There are no administrative implications for this Office.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None at this time.

TECHNICAL ISSUES

Noted above.

OTHER SUBSTANTIVE ISSUES

None

ALTERNATIVES

None at this time.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None.