

LFC Requester:	Graeser, Laird
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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: **Date** March 10, 2015
Original **Amendment** **Bill No:** HB 141a
Correction **Substitute**

Sponsor: Rep. Patricia A. Lundstrom **Agency Code:** Attorney General's Office-305
Short Title: Public Recreation Land Special Valuation **Person Writing:** James C. Jacobsen, A.A.G.
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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:

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: The House Ways and Means Committee’s amendment of House Bill 141, dated March 3, 2015, directs that land classified as “Recreational Property” be valued as if it was land used primarily for agricultural purposes. Under NMSA 1978, §7-36-20(B), “...agricultural use means the use of land for the production of plants, crops, trees, forest products, orchard crops, livestock, poultry, captive deer or elk, or fish.” Revised Section A defines recreational property as land: 1), primarily used for public recreational use; 2), which has been deemed recreational property by a governing body having jurisdiction over it; 3), access to which is made available to the public pursuant to an agreement between the land owner and either a state or local government; 4), which, for at least one of the three proceeding years, had been classified as agricultural land; and 5), 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 of Taxation & Revenue (“Department”) to promulgate rules for determining whether land is used primarily for recreational purposes. The Amendment deletes the responsibility for determining the method of valuation originally assigned to the Department, eliminating the separation of powers concern expressed previously.

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 are no fiscal implications for this office.

SIGNIFICANT ISSUES

The provisions in Sub-section A for the criteria establishing mandatory classification as recreational property are not specific and may lead to strife between various government entities. The property must be “used primarily for public recreational use,” which implies a 51% standard. In the absence of definitions, common usage for what is the “public,” and what is

“recreational” would be employed by the courts in determining whether a particular parcel qualifies. “Recreational” encompasses a broad spectrum of activity, which, in the future, may not meet present understandings of its meaning.

The property must be deemed recreational property by some governing body, Subsection (A)(2). Subsection H defines “governing body as “...the legislature or the elected body of a county or municipality.” But Subsection A(2) and A(3) distinguish between “governing bodies” and state or local governments. The significance of the distinction is not clear, but there is the implication that they are not necessarily the same. One might expect litigation over whether county commission approval of a plat or development map containing land designated as common recreational areas constitutes the agreement contemplated in Subsection A(2), and if so, whether a state agency’s agreement some years later meets the criteria of Subsection A(3).

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. At \$25 or 25% of the underpaid tax, there is little reason to report the change. If the land reverts to agricultural use, there is no pecuniary incentive to self-report.

There is no provision for retroactive revaluation in the event of a change of use, 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 due. There are no provisions for determining the consequences of a change in ownership or use in mid-year, although conceivably that could be addressed in the rule making contemplated in Subsection C.

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