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FISCAL IMPACT REPORT

LAST UPDATED _____
ORIGINAL DATE 2/5/25

SPONSOR Wirth

BILL
NUMBER Senate Bill 112

SHORT TITLE Higher Ed Housing Facility Property Tax

ANALYST Graeser

REVENUE* (dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
Property Tax			Nominal loss of (20.0)			Recurring	General Obligation Bonds
			Nominal loss of (681.0)			Recurring	APS, Bern Co, ABQ, UNMH, AMAFCA,

Parentheses () indicate revenue decreases.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Bern Co Assessor	No fiscal impact	No fiscal impact	No fiscal impact		Recurring	

Parentheses () indicate expenditure decreases.

Sources of Information

LFC Files

Agency Analysis Received From

Higher Education Department (HED)
University of New Mexico (UNM)
San Juan Community College (SJCC)
Department of Finance and Administration (DFA)

Agency Analysis was Solicited but Not Received From

New Mexico Counties (NMC)
Department of Justice (DOJ)
New Mexico Municipal League (NMML)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Senate Bill 112

Senate Bill 112 (SB112) amends Section 7-36-4 NMSA 1978 of the Property Tax Code to allow a limited real property tax exemption. This new exemption would apply to student housing built on land owned by an institution of higher education and leased to a non-exempt entity to manage and collect rents.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or June 20, 2025, if enacted. The exemption would first be effective for the 2026 property tax year.

FISCAL IMPLICATIONS

The University of New Mexico (UNM), which has two housing complexes built on university land but owned by private companies, indicates the bill would preserve the affordability of on-campus student housing and encourage future public-private partnerships to address critical student housing needs on campus.

UNM reports the following, which provides an estimate of the near-term fiscal impact:

If enacted, SB112 would eliminate property tax liabilities for leasehold interests held by private entities in P3 arrangements for student housing. Without this exemption, UNM and similar institutions will face challenges in securing future P3 arrangements, limiting the development of affordable on-campus housing.

Without this exemption, the increased costs to the private entities will be passed on to students as increased rents for students. The estimated annual property taxes for UNM P3 facilities will be:

Lobo Village - \$350,000
Casas del Rio - \$350,000

The average monthly rents would increase by approximately \$33.91 for Lobo Village and \$38.18 for Casas del Rio. For context, the current average monthly rent is \$768.11 at Lobo Village and \$687.99 at Casas del Rio.

At present, 43 percent of UNM on-campus student residents are housed in either Lobo Village or Casas del Rio, so rent increases on these students will have a substantial negative impact on housing affordability. Availability and accessibility of housing is a major public policy issue at the local, state and national level.

The SB112 exemption would ensure on-campus housing costs remain stable, promoting student retention and academic success while fostering private investment in future housing projects.

UNM has assumed this property tax exemption since first entering an agreement with American Campus Communities (ACC), Inc., although the assumption that property tax exemption is unsound and the amendments proposed in SB112 might not resolve the issue.

From the estimates provided by UNM, the market value of each structure is about \$21.7 million (based on being subject to 48.26 mills of property tax.). The average increase in rent attributed to the imposition of property tax after the sale implies there are 860 rentable units in Lobo Village and 764 units in Casas del Rio. Using these figures and the average rent in each area further implies that rents would increase by 4 percent for Lobo Village and 5.5 percent for Casas del Rio, less than the estimates in UNM’s analysis. It should also be noted that after the first year, assessments of the properties would be subject to a rule limiting increases to 3 percent.

SIGNIFICANT ISSUES

The section of statute to be amended by this bill has been amended four times (1977, 1985, 1995 and 1998)¹ since it was first enacted in 1976 and has been called the least well understood and, perhaps, the most confusing section of the Property Tax Code. The proposed amendments may further exacerbate the lack of clarity of Section 7-36-4 NMSA 1978.

To summarize current law: Fractional interests of profit-making companies in real property owned by exempt entities are exempt (although this exemption of realty without a constitutional amendment allowing this exemption is the source of the controversy). However, if the improvements are owned by the profit-making company, then the leasehold is taxable.

To summarize the proposed amendments: The student housing leasehold, otherwise taxable because the improvements would not be owned by the exempt entity, would become exempt from property taxes if the real estate is for the use of students or medical residents of an institution of higher education, built by the non-exempt company on land owned by the exempt entity and leased to the profit-making company to operate. These amendments exempting real property are not proposed to implement a constitutional amendment allowing this exemption.

There are two constitutional provisions that may conflict with the bill:

- (1) Article VIII, Section 3. In effect, this section prohibits the Legislature from enacting a property tax exemption for real property. This is an inference because the text of the provision allows the Legislature to enact exemptions for tangible personal property.²
- (2) Article IV, Section 24, provides that the Legislature may not pass local or special laws when general laws will suffice. Although the proposed amendments are written generally, in practice the permission granted by the amendments will be utilized only by UNM.³

The history of this issue is informative. This information has been obtained from the Decision and Order, with subsequent Notice of Appeal.

Lobo Village was constructed in 2012 by American Campus Communities (ACC), Inc and leased by UNM to ACC. Casas del Rio was similarly constructed in 2013 by

¹ 1953 Comp., § 72-29-2.2, enacted by Laws 1976, ch. 61, § 1; 1977, ch. 285, § 1; 1985, ch. 109, § 3; 1985, ch. 225, § 6; [1995, ch. 12, § 8](#); [1998, ch. 49, § 1](#).

² “Exemptions of personal property from ad valorem taxation may be provided by law if approved by a three-fourths majority vote of all the members elected to each house of the legislature.”

³ “Article 4, Section 24, “The legislature shall not pass local or special laws in any of the following cases: ...the assessment or collection of taxes ...”

American Campus Communities (ACC), Inc and leased by UNM to ACC. Although both UNM and ACC apparently assumed that the property was owned by UNM and subject to the constitutional exemption from property tax for realty owned by a government entity, that presumption was successfully rebutted in the hearing.

Prior to December 2020 the properties were not valued or placed on the tax rolls by the Assessor. On November 3, 2020, the Assessor valued the properties and placed them on the tax rolls. In December 2020, Bernalillo County Treasurer issued tax bills for Lobo Village for years 2012-2020, and for Casas del Rio for years 2013-2020. A tax bill in excess of \$6 million was issued. ACC was joined by UNM in protesting this bill based on the constitutional exemption. The decision of the protest board was that ACC had never filed the paperwork to claim the exemption and, therefore, had no standing to protest because there had not been a denial of an exemption. The subsequent appeal led to the assessment sustained by the district court.

Earlier history adds to the controversy. In 1975, the Legislature proposed a constitutional amendment allowing it to exempt fractional interests. Of note, the amendment did not affirmatively address the taxability of fractional interests in the absence of the amendment; apparently it was just presumed. The amendment was defeated in the 1976 general election. In 1977, after the failed constitutional amendment, the Legislature redefined “fractional interest” to exclude leaseholds over 75 years. Subsequent bills and amendments did little to resolve the situation.

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