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## FISCAL IMPACT REPORT

SPONSOR Stapleton DATE TYPED 3/2/05 HB HJR 13/aHVEC  
 SHORT TITLE Property Tax Exemption For Certain Groups SB \_\_\_\_\_  
 ANALYST Hanika-Ortiz

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
	(\$372.0)		Recurring	County and Municipal Funds

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to: SB-175, HJR-12, SJR-9

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of HVEC Amendment

The House Voters and Elections Committee amendment deletes the exemption from state property taxation for a Section 501(c)(3) or 501(c)(10) fraternal beneficiary society, order or associations. The amendment adds language to allow the property exemption for a fraternal beneficiary society, order or association that has been granted exemption from the federal income tax as described in Section 501(c)(8) of the Internal Revenue Code. Additional language is also added to prohibit such a society, order or association exempt from taxation pursuant to this section from conducting gaming activities in New Mexico.

#### Significant Issues

The exemptions in the amendment reduce but do not eliminate the negative impact on county and municipal funds. The full impact will be based on the number of qualifying fraternal organizations in New Mexico that do not conduct gaming activities.

To be exempt under Internal Revenue Code section 501(c)(8), a fraternal beneficiary society, order or association must have a common pursuit, operate under the lodge system and provide for the payment of life, sick, accident or other benefits to society members. The exemption will be applicable so long as the members are eligible for benefits and the reasons for excluding certain members are reasonable.

### Synopsis of Original Bill

HJR-13 would submit a proposed constitutional amendment to New Mexico voters that would exempt from property tax properties owned by certain types of institutions. Property that would become exempt includes: "...property of a fraternal beneficiary society, order or association that has been granted exemption from the federal income tax as an organization described in Section 501(c)(3) or 501(c)(10) of the Internal Revenue Code."

### Significant Issues

Article VIII, Section 3 of the New Mexico Constitution currently provides that:

“The property of the United States, the state and all counties, towns, cities and school districts and other municipal corporations, public libraries, community ditches and all laterals thereof, church property not used for commercial purpose, all property used for educational or charitable purposes, all cemeteries not used or held for private or corporate profit and all bonds of the state of New Mexico, and of the counties, municipalities and districts thereof shall be exempt from taxation.”

TRD reports the proposed amendment appears to be consistent with current provisions of the constitution.

### **PERFORMANCE IMPLICATIONS**

If voters approve proposed amendment in the 2006 general election, enabling legislation would most likely be approved by the legislature in 2007, and the exemptions would be available in the 2008 property tax year.

### **FISCAL IMPLICATIONS**

TRD reports if proposed amendment is passed by the legislature and approved by voters, a portion of the property tax burden from entities benefiting from the exemption will shift to entities that do not, via property tax rate increases. Detailed statistics are not available regarding effects of the proposed measure on taxable value by county. However, representatives of Bernalillo County, which contains approximately 26 percent of the statewide non-residential net taxable value, say the proposed measure would decrease their net taxable value by approximately \$3.2 million. Assuming the statewide net taxable value of property subject to the new exemption is 3.85 times the Bernalillo total, or roughly \$12.4 million, and multiplying by the 30-mill statewide average nonresidential property tax rate, suggests roughly \$372,000 in property taxes are currently paid by nonprofit entities that would benefit from the exemption. Hence, if voters approve the proposed amendment, enabling legislation would likely shift the burden of paying approximately \$372,000 in property taxes – roughly .04 percent of the current \$940 million total – to entities not subject to the exemption.

**ADMINISTRATIVE IMPLICATIONS**

TRD reports if voters approve proposed constitutional amendment, the administrative impact to TRD would remain relatively minor because the property tax system is administered primarily by counties.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Relates to SB 175, County Clerk Recording of Property Transfers

Relates to HJR-12, Statewide Millage Rate for Schools

Relates to SJR-9, Poverty Level Property Tax Exemption

**TECHNICAL ISSUES**

None indicated by TRD

**OTHER SUBSTANTIVE ISSUES**

According to the IRS web site:

501(C)(3) Organizations:

The exempt purposes set forth in IRC Section 501(c)(3) are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and the prevention of cruelty to children or animals. The term charitable is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening the burdens of government; lessening of neighborhood tensions; elimination of prejudice and discrimination; defense of human and civil rights secured by law; and combating community deterioration and juvenile delinquency.

501(C)(10) organizations:

To be exempt under IRC 501(c)(10), a domestic fraternal society, order, or association must meet the following requirements:

1. It must have a fraternal purpose. An organization has a fraternal purpose if membership is based on a common tie or the pursuit of a common object. The organization must also have a substantial program of fraternal activities.
2. It must operate under the lodge system. Operating under the lodge system requires, at a minimum, two active entities: (i) a parent organization; and (ii) a subordinate organization (called a lodge, branch, or the like) chartered by the parent and largely self-governing.
3. It must not provide for the payment of life, sick, accident or other benefits to its members. The organization may arrange with insurance companies to provide optional insurance to its members without jeopardizing its exempt status.

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4. It must devote its net earnings exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes.
5. It must be a "domestic" organization, that is, it must be organized in the United States.

**ALTERNATIVES**

None indicated.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

Proposed constitutional amendment under HJR 13 will not be submitted to voters for approval in the 2006 general election.

**AHO/njw:yr**