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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/23/2007

SPONSOR Barela LAST UPDATED 2/28/2007 HB HJR 13

SHORT TITLE National Guard Property Tax Exemption, CA SB \_\_\_\_\_

ANALYST Schuss

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	Unknown	Unknown	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney Generals Office (AGO)  
Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of Bill

House Joint Resolution 13, if approved by the voters, would amend Article VIII Section 5 of the New Mexico Constitution to define “member of the armed forces of the United States” for property tax exemption purposes to include a member of the National Guard who is honorably discharged, unless the person received a discharge for misconduct.

### FISCAL IMPLICATIONS

There will be a negative impact to tax revenue and this will depend on how many of those honorably discharged from the National Guard qualify and take this exemption. However, the debt service from property taxes will still have to be paid, so potentially rates will adjust to correct for any loss. (See Technical Issues and Possible Questions)

There could be significant impacts to some jurisdictions based on the concentration of those eligible to take the exemption and property tax rates.

## **House Joint Resolution 13 – Page 2**

An analysis from the Taxation and Revenue Department will be necessary to determine these figures.

According to the Department of Military Affairs, there are approximately 4,000 active members in the New Mexico National Guard, and of those, 400 to 800 are discharged on a yearly basis.

### **SIGNIFICANT ISSUES**

AGO has included the following in their analysis:

Article VIII Section 5 of the New Mexico Constitution currently requires the Legislature to provide an annual property tax exemption in the amount of \$4,000 to honorably discharged “members of the armed forces of the United States”. The “veteran’s exemption” is provided in NMSA Section 7-37-5. Although the term “National Guard” is not defined in this resolution, presumably its amendments are considered necessary because of the dual-status of National Guard personnel as both members of the “state militia” in peacetime, and the federally recognized “National Guard” subject to Federal activation. That status arises from Article I Section 8 of the United States Constitution granting Congress the authority to govern and call forth the militia, and the Second Amendment providing for state militias, which fall under the control of the Governor during peacetime.

The National Guard is recognized by the Militia Act of 1903, 10 U.S.C. 311, as the largest organized Federal Reserve military force in the United States. 10 U.S.C. 12602 recognizes duty in the National Guard as duty in the Army or Air Force Reserve. 32 U.S.C. 101 defines the National Guards to mean the federally recognized state militias.

The Army National Guard is one of three components of the U.S. Army. The other two consist of the Active Army and the Army Reserves. The Air National Guard is a separate component of the United States Air Force.

New Mexico’s militia is recognized in Article XVIII Section 1 of the New Mexico Constitution as the “New Mexico National Guard” and in NMSA Sections 20-4-1 to 20-4-14.

The resolution presumably authorizes the exemption for members of the New Mexico National Guard who may be honorably discharged while serving in their capacity as state militia members.

According to TRD, currently the discharged members of the National Guard are not granted the tax exemption unless they have been called up to active federal duty. Basic training and advanced training are considered active duty for training only, this is reflected as such on the DD 214. New Mexico Statutes require active duty for a minimum of 90 days, this duty must be for active duty other than for training, for this reason as it stands members of the National Guard who have not been called up for active federal duty do not qualify for the veterans tax exemption.

### **TECHNICAL ISSUES**

It is not clear whether or not HJR 13 would include those that were honorably discharged but not considered to have been on “active duty” because certain qualifications were not met.

### **House Joint Resolution 13 – Page 3**

The constitution currently states that one who is honorably discharged from the armed services and was on “active duty” continuously for 90 days would qualify. This potentially would already include those from the National Guard.

This should be clarified before HJR 13 appears on a ballot.

### **POSSIBLE QUESTIONS**

Is the intent of HJR 13 to remove the active duty requirement for those honorably discharged from the National Guard?

BS/csd:nt