

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill No:** HB 132

**49th Legislature, 1st Session, 2009**

**Short Title:** Educational Property Tax Exemptions

**Sponsor(s):** Representative Rick Miera and Others

**Analyst:** Peter B. van Moorsel

**Date:** February 3, 2009

---

**Bill Summary:**

HB 132 amends the *Tax Code* to exempt from property tax a property that is:

- leased to a public school district, public school, or charter school; and
- used exclusively for educational purposes.

**Fiscal Impact:**

HB 132 does not contain an appropriation.

The Taxation and Revenue Department (TRD) analysis of HB 132 reports that the bill would impose minimal fiscal impact on the state of New Mexico or local governments. According to TRD, “reductions in net taxable value caused by the exemption would, for the most part, be offset by very minor property tax rate increases applicable to essentially all taxpayers.”

**Issues:**

TRD’s analysis of HB 132 identifies a potential constitutional issue pertaining to Article VIII, Sec. 3 of the New Mexico Constitution, which reads:

“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, all church property not used for commercial purposes, 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.”

Citing this section, the TRD analysis states:

- “if property is not exempt under the state Constitution, Article VIII, Sec. 3, the Legislature cannot by statute make it exempt”; and
- “the Constitution only allows the Legislature to make personal property exempt by statute. Property leased, but not owned, by a school district is not exempt under Article VIII, Sec. 3 because it is not the “property of” the school district.”

However, there may be another interpretation more in line with the intention of HB 132. That is, because the constitutional provision exempts from taxation “all property used for educational or

charitable purposes” [emphasis added] – and not all property owned by educational or charitable organizations – the exemption may be based upon use rather than ownership. If that is the case, then HB 132 might be said to clarify the application of the tax exemption provided by the state constitution.

**Technical Issue:**

TRD’s analysis states that, because HB 132 does not specify an effective date, it would take effect 90 days following the adjournment of the 2008 Legislature – June 19, 2009. Because this potential effective date is well into the valuation and assessment cycle for 2009 taxes, it may be difficult for counties to implement this tax exemption.

**Related Bill:**

SB 115 *Leased School Property Tax Exemptions* (identical)