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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 02/01/14  
**LAST UPDATED** 02/04/14    **HB** 221

**SPONSOR** Stapleton

**SHORT TITLE** Property Tax Exemptions For Certain Age    **SB** \_\_\_\_\_

**ANALYST** Graeser

### REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16	FY17	FY18		
	***	***	***	***		Property Tax Beneficiaries

(Parenthesis ( ) Indicate Revenue Decreases)

\*\*\* This bill would have very small effect on all the property tax beneficiaries, but substantial effect on shifting taxes between the protected class and the remaining residential taxpayers.

### SOURCES OF INFORMATION

LFC Files

Responses Received From

### SUMMARY

#### Synopsis of Bill

House Bill 221 proposes to exempt up to 100 percent of the taxable value of residential property for homeowners who fulfill the following three conditions:

- Use property as primary residence and has owned property for at least 15 years;
- Aged 70 or greater;
- Has an annual modified gross income of \$40,000 or less.

The amount of the exemption would be as follows:

- For homeowners aged 70 to 74 .....50% of taxable value
- For homeowners aged 75 to 79 .....75% of taxable value
- For homeowners aged 80 or older .....100% of taxable value

The provisions of the bill are applicable to property tax years beginning on or after January 1, 2014.

### FISCAL IMPLICATIONS

HB 221 would have virtually no impact on revenues for any of the beneficiaries of property taxes. This statement is correct for both operating levies and debt imposed the state (GO bonds), municipalities, counties, public schools or special districts. However, there would be substantial shifts in relative tax burden between the members of the protected class and other residential taxpayers. (Note: residential and non-residential rates are separately subject to yield control, so the exemption for a protected class would not shift burden from residential property to non-residential property, but would shift burden within the residential property class.)

In its analysis of 2012’s HJR 8, TRD provided the following analysis of the impact on New Mexico taxpayers: “... the reduction in the property tax base due to this exemption would cause tax rates to rise, where not already limited by caps or by yield control, to compensate for the loss in the base. Qualifying for the proposed exemption would require taxpayers to meet three conditions: 1) age 75 or over; 2) MGI no more than \$15,000; and 3) own and occupy their residence. According to census data<sup>1</sup>, 5.7 percent of New Mexico’s population is between 75 years of age or older. Approximately 69 percent of New Mexico residents own and occupy their homes. Approximately 30 percent of the population reports a modified gross income or its equivalent of less than \$15,000. Hence roughly one percent of the state’s population would likely be eligible for the proposed exemption based on the numbers mentioned above (5.7% x 69% x 30% = 1.18%). This figure is probably overstated because many of the individuals aged 75 and over are in nursing homes or assisted living arrangements.” Note, that HJR-8 was probably not necessary, since Article VIII, Section 1 already allows the legislature the ability to limit taxes based on age, income and home ownership.

The provisions of this bill are somewhat different, and the above is simply provided as an illustration of the relative impact. For this bill, the income limit is \$40,000, not \$15,000 so that factor would increase. About 47 percent of all households in New Mexico had income of \$40,000 or less in 2013. This bill would allow a 50% reduction in property valuation for taxpayers aged 70 to 74, so that relative factor would also increase. The table below indicates the 9.5 percent of the total population would be subject to the provisions of this bill. However, the requirement of the bill that taxpayers own their homes for 15 years would reduce the proportion of homeowners eligible for this exemption. Approximately 37% of all occupied housing units in New Mexico have been in their homes since 2000. Thus, 9.5% x 37% x 47% ≈ 1.5% or less of the population would be eligible for the proposed exemption.

New Mexico Population Profile, 2011

This bill may be counter to the adequacy, efficiency and cost of tax expenditures to cover growing recurring

Age	% of total Population
0 to 69	90.5%
70 to 74	3.5%
75 to 79	2.6%
80 and over	3.4%

LFC tax policy principle of equity. Due to the increasing revenues may be insufficient appropriations.

Estimating the cost of tax expenditures is difficult. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for a tax expenditure may be ambiguous, further complicating the initial cost estimate of the expenditure’s fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures.

## PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is not met since TRD is not required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose.

## TECHNICAL ISSUES

In general, the legislature is prohibited by the Constitution from passing any law exempting real property from uniform property taxation without an enabling Constitutional amendment. However, Article VIII, Section 1 of the Constitution provides an exception to this general principle and requires or allows the legislature to limit property taxes based on owner-occupancy, age and income.

The State Constitution prohibits the Legislature from enacting any law that provides for an exemption from property taxation for real property, although Article VIII, Section 3 permits the Legislature to enact exemptions of personal property:

Sec. 3. [Tax-exempt property.] 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.

All of the exceptions to uniform property taxation in New Mexico are enumerated in the Constitution at Article VIII, Section 5, although 1997's tax limitation measure is at Article VIII, Section 1. The annotations are relevant:

All tangible property in New Mexico is subject to taxation in proportion to value, and should be taxed, unless specifically exempted by the constitution or by its authority. *Sims v. Vosburg*, 43 N.M. 255, 91 P.2d 434 (1939).

The phrase "taxes levied upon tangible property" as used in this section has same meaning as "taxes levied upon real or personal property" used in Section 2 of this article. *Hamilton v. Arch Hurley Conservancy Dist.*, 42 N.M. 86, 75 P.2d 707 (1938).

Classification of property generally. — The constitution in this section and sections 3 and 5 of this article, in effect, classes tangible property into that exempt from taxation, that which may be exempted and that which must be taxed. *State ex rel. Attorney Gen. v. State Tax Comm'n*, 40 N.M. 299, 58 P.2d 1204 (1936).

In 1997, the voters enacted a tax limitation measure:

Section 1. [Levy to be proportionate to value; uniform and equal taxes; percentage of value taxed; limitation on annual valuation increases.] (1997)

B. The legislature shall provide by law for the valuation of residential property for property taxation purposes in a manner that limits annual increases in valuation of residential property. The limitation may be applied to classes of residential property taxpayers based on owner-occupancy, age or income. The limitations may be authorized statewide or at the option of a local jurisdiction and may include conditions under which the limitation is applied. Any valuation limitations authorized as a local jurisdiction option shall provide for applying statewide or multi-jurisdictional property tax rates to the value of the property as if the valuation increase limitation did not apply.

While there is always concern over the constitutionality of property tax measures, this one appears to be able to survive challenge.

LG/ds:jl