# F I S C A L   I M P A C T   R E P O R T

**SPONSOR** Stapleton

**ORIGINAL DATE** 02/15/14
**LAST UPDATED**

**HJR** 14

**SHORT TITLE** Low Income Senior Citizen Property Tax, CA

**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)

*** The HJR itself has fiscal consequences only for the Secretary of State who would be responsible for placing this proposal before the voters. If approved by the voters and included as Constitutional provisions, the implementing 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.

## ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY14 | FY15 | FY16 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|---|---|---|
| **Total** | | >$ 46.0 | | >$ 46.0 | Nonrecurring | Election Fund |

Parenthesis ( ) indicate expenditure decreases

Under Section 1-16-13 NMSA 1978 and the NM Constitution, the SOS is required to print samples of the text of each constitutional amendment, in both Spanish and English, in an amount equal to ten percent of the registered voters in the state. The SOS is also required to publish them once a week for four weeks preceding the election in newspapers in every county in the state. In 2012, the cost for the 2012 General Election ballots was $46 thousand per constitutional amendment. However, if the ballot size is greater than one page, front and back, it would increase the cost of conducting the general election. In addition to the cost of the ballot, there will be added time for processing voters to vote and would mean additional ballot printing systems would be required to avoid having lines at voting convenience centers.

## RELATIONSHIP

Relates to HB 221, which proposes to implement in statute virtually the identical provisions as this joint resolution. Article VIII, Section 1(B) of the State Constitution, enacted by the voters in

1998, requires the legislature to limit property taxes based on home ownership, age and income. 2003's "3 percent limitation" was one statutory implementation of that mandate. HB 221 would be another.

## SOURCES OF INFORMATION
LFC Files

## SUMMARY

Synopsis of Bill

House Joint Memorial 14 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

## EFFECTIVE DATE

Effective upon approval by the voters.

## FISCAL IMPLICATIONS

HJR 14 would have no fiscal impacts unless presented to the voters and the voters passed the Constitutional amendment. The following impacts discuss the effect of legislation implementing the provisions of the Joint Memorial. Again, the provisions of this proposal have already be approved by the voters and can be found (generically) in Article VIII, Section 1(B) of the Constitution.

Implementing legislation for HJR 14 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, 15.7 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. This statement also applies to HJR 14. It is probably not necessary, however, HJR 14 is far more specific than the generic property tax limitation provisions of Article VIII, Section 1 (B).

The provisions HJR 14 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 percent reduction in property valuation for taxpayers aged 70 to 74, so that relative factor would also increase. The table to the right 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 percent of owners 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 | |
|---|---|
| Age | % of total Population |
| 0 to 69 | 90.5% |
| 70 to 74 | 3.5% |
| 75 to 79 | 2.6% |
| 80 and over | 3.4% |

This bill may be counter to the LFC tax policy principle of adequacy, efficiency and equity. Due to the increasing cost of tax expenditures, revenues may be insufficient to cover growing recurring 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 <u>not</u> met since TRD is <u>not</u> 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. However, this is a joint resolution proposing a Constitutional Amendment. The appropriate place for accountability would be in implementing legislation.

## ADMINISTRATIVE AND COMPLIANCE IMPACT

Although the joint resolution will have no administrative consequences, the enabling legislation will be somewhat complicated to implement. TRD explains:

> ... [implementing this proposal] will have greater administrative impact than most current tax property tax exemptions. This exemption would be administered like an affordable housing special method of valuation or the limitation on increases for owner occupied low income sixty-five or older (Section 7-36-21.3 NMSA 1978) homeowners. These both require the taxpayer to apply for the exemption with their county assessor. An additional issue is the length of residency. In some instances, the assessors could verify the length of residency by the term of the head of family exemption (Section 7-37-4 NMSA 1978). The Property Tax Division (PTD) believes that assessors have a permanent record retention requirement for tax rolls. The less computerized counties would have more difficulty verifying this and adjusting for changes in age each year rather than applying a fixed exemption.
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> All thirty-three county assessor's offices would have to develop a standardized form and assist taxpayers through the application process. This would require review of taxpayer income statements based on differing age ranges and length of residency qualifications. It would add administrative overhead to county assessment practices, particularly if the residents in question failed to apply for a head of household exemption at some point or didn't file personal income tax returns.
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> Because constitutional amendments become effective when they are passed by the voters, the timing could conflict with the making changes for the current tax year. January 1 is the valuation or property tax lien date (Section 7-38-7 NMSA 1978). April 1 (Section 7-38-20 NMSA 1978) is the date by which County Assessors are required to mail their Notices of Value to their taxpayers. Having said that, other property tax exemptions have been successfully enacted and they would likely apply to the following property tax year.

**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).
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> 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 in Article VIII, Section 1:

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.

The provisions of this Joint Resolution and HB 221 appear to be more specific than the somewhat generic provisions of Article VIII, Section 1. Legislation is subject to review and veto by the Governor, while Joint Resolutions take various proposals to the voters and put the successful Constitutional Amendments in the Constitution as people's rights. Joint Resolutions, passed by a majority of each house of the legislature, are not subject to review or veto by the Governor.

Modified gross income language (Section 7-2-2 NMSA 1978) is used in other property tax statutes like Section 7-36-21.3 NMSA 1978. Adjusted gross income is frequently cited in FIRs and publications as a more appropriate measure because it is defined in the IRS Code (Section 62).

LG/jl