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FISCAL IMPACT REPORT

ORIGINAL DATE 02/10/14

SPONSOR Sanchez, M. LAST UPDATED _____ HB _____

SHORT TITLE Disabled Veteran Benefit Assessment SB 312

ANALYST Graeser

REVENUE (dollars in thousands)

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

Parenthesis () indicate revenue decreases

The fiscal impact of this would be minimal for the property tax beneficiaries, because of yield control and provisions for determining debt rates. However, this would entail a shift in burden between the protected class and other taxpayers in a special benefit district, such as conservancy districts.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

Senate Bill 312 adds an exemption from a special benefit assessment for property owned by a 100 percent disabled veteran. This exemption includes joint or community property, but must be occupied by the disabled veteran as that person's principal place of residence. The property of a surviving spouse of a disabled veteran is exempt from property taxation if the surviving spouse and the disabled veteran were married at the time of the disabled veteran's death and the surviving spouse continues to continuously occupy the property as the spouse's principal place of residence after the veteran's death.

EFFECTIVE DATE: none stated; assume May 21, 2014

FISCAL IMPLICATIONS

This bill does create a tax expenditure in a normative sense which may be counter to the LFC tax policy principle of equity. The provisions of this bill will create minimal impact for property tax

revenue beneficiaries so the LFC tax policy principle of adequacy is not invoked. However, the provisions of the bill will create significant inequities between the protected class and the remaining taxpayers in a special benefit district. When the special district is as large as a conservancy district, the relatively few taxpayers in the protected class will impose on minimal additional burden on other taxpayers. However, when the special district is relatively small – for example, a sewer or water benefit district -- then substantial distortion could result. Particularly for these small districts, the assessment creates a benefit that increases the market value of the veteran's property. This is known as a "benefits received tax." While the constitutional exemption for 100% disabled veterans at Article VIII, Section 15 may not have explicitly dealt with the issue of exempting 100% disabled veterans from special benefit assessment, the AG has published an AG's opinion letter that the provisions of Article VIII, Section 15 apply to these assessments. Since the special benefit assessment exemption is Constitutional, it should not be considered a tax expenditure.

SIGNIFICANT ISSUES

The major purpose of this bill may be to resolve a conflict between TRD's Property Tax Division and regulations governing this aspect of the Property Tax Code and an Attorney General's Opinion letter.

TRD reports, "...there is a conflict between the regulation in the Property Tax Code and a 2008 letter from the New Mexico Attorney General's Office. The trailing regulation in Section 7-37-5 NMSA 1978 (PTC Regulation 3.6.6.13 NMAC) states: 'The disabled veteran exemption is not effective against impositions of special benefits assessments authorized by laws outside the Property Tax Code, such as conservancy district assessments.'"

TRD's comments continue:

The April 2, 2008, letter from the New Mexico Attorney General to Representative Thomas Garcia states "Under Section 7-37-7, property taxes authorized by laws outside of the Property Tax Code are imposed on the taxable value of property, as that term is used in the Code, minus any exemption authorized by the Code. Consequently, the disabled veterans exemption authorized under Section 7-37-5.1 effectively applies to property taxes imposed under laws other than the Property Tax Code. **This makes it unnecessary for the state legislature to enact a separate disabled veteran exemption for each property tax authorized by those other laws.**"

This conflict has resulted in disagreements between county assessors and the administrators of special benefits programs. We have regulations in the Property Tax Code that everyone can use for reference and a narrowly circulated Attorney General's letter from 2008. Assessors and administrators for special benefits districts need more guidance.

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. Since the exemption is Constitutional per the AG's opinion, it should not be considered a tax expenditure subject to LFC's policy of accountability.

ADMINISTRATIVE IMPLICATIONS

TRD notes that, "... the administrative impact of this proposal would be relatively minor for counties with advanced Computer Assisted Mass Appraisal systems. Assessors and treasurers with advanced systems could accommodate this change with ease. Counties with less advanced computers would have more difficulty implementing the shift and likely spend considerable time in quality control. PTD will need to update Regulation 3.6.6.13(A) NMAC to reflect the changes in this bill. It is doubtful that county assessors and eligible taxpayers could accommodate this change for the current tax year. January 1 is the valuation or property tax lien date (Section 7-38-7 NMSA 1978). April 1 is the date by which county assessors are required to mail their Notices of Value to their taxpayers (Section 7-38-20 NMSA 1978)."

TECHNICAL ISSUES

In general, the State Constitution prohibits the Legislature from enacting any law that provides for an exemption from property taxation for real property. 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. 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).

However, the Attorney General has indicated that Article VIII, Section 15 of the New Mexico Constitution, exempts from taxation the property of veterans with a one hundred percent disability from property taxation, whether that tax is imposed in the Property Tax Code or in the Municipal or County Codes. In this regard, TRD notes, "... tax exemptions become statute through constitutional amendments. Trying to put exemptions into effect by statute change is usually not conclusive. The Property Tax Division (PTD) would like to see a statutory overhaul in response to an Attorney General's Opinion. A constitutional amendment would be ideal. PTD's view lacks weight because, by definition, the Attorney General's Office is the authority in these matters."

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy:** Revenue should be adequate to fund needed government services.
2. **Efficiency:** Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity:** Different taxpayers should be treated fairly.
4. **Simplicity:** Collection should be simple and easily understood.
5. **Accountability:** Preferences should be easy to monitor and evaluate

LG/ds:svb