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

SPONSOR Garcia, M **ORIGINAL DATE** 1/22/15 **LAST UPDATED** **HJR** 7

SHORT TITLE Exempt Low-Income Disabled from Property Tax **SB**

ANALYST Graeser

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		$200.0		$200.0	Nonrecurring	General Fund

(Parenthesis ( ) indicate expenditure decreases)

The cost to the Secretary of State’s office in conducting an election at the same time as a general election is shown.

The cost of a special election just for the question is considerably more. The bill permits either a general election of a special election.

SOURCES OF INFORMATION
LFC Files

Responses Received From
Governor’s Commission on Disability (GCD)
Attorney General’s Office (AGO)
State Auditor’s Office (SAO)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Joint Resolution 7 proposes an amendment to Article 8 of the State Constitution to exempt from property taxation a principal residence, including the joint or community property of married individuals, of a one hundred percent permanently disabled person whose household modified gross income is $15,000 or less. It calls for the amendment to be submitted to voters at the next general election or special election called for that purpose. The resolution also proposes that the $15,000 income ceiling be indexed for inflation in any enabling legislation.

There is no effective date of the act – Assume June 19, 2015. Any enabling legislation should conform to the regular property tax year, which begins January 1 each year.

FISCAL IMPLICATIONS

This proposed constitutional amendment has no direct fiscal impacts, except for the costs of conducting an election.

However, if the joint resolution passes and is approved by the voters, it will have a small impact on beneficiaries and a more substantial effect of shifting tax burden between advantaged and disadvantaged taxpayers. In which case, this implementing legislation may not be counter to the LFC tax policy principles of adequacy, efficiency, accountability and equity.

Disability Type	Percent
Any Disability	50.7
Visual	10.3
Hearing	22.7
Ambulatory	33.4
Cognitive	14.5
Self-Care	14.1
Independent Living	26.3

However, TRD notes that voter approved mill rates, constitutionally protected debt and the mill rates at maximum imposed rates would not increase. Other rates would shift or increase to compensate for the loss in the property tax rate.

Generally, estimating the cost of tax expenditures is difficult. In the case of Property Tax exemptions, data must be gathered specially from each of the 33 County assessors. While some of the assessors' offices are fully automated, some of the smaller counties still use manual processes. It will be difficult

SIGNIFICANT ISSUES

From 2011, American Community Survey data, the US prevalence of any disability in the total population is about 19 percent, with a prevalence of a severe disability of about 12.6 percent. For the elderly population, 50.7 percent have some disability and approximately 15 percent have a severe disability. Using "self-care" as a surrogate for 100 percent disabled, we can estimate that 3.5 percent of the working-age population and 5 percent of the elderly population may be 100 percent disabled for the purposes of this estimate. The poverty rate for disabled residents is about twice that of the general population. About two-thirds of the general adult population owns their own homes. The medium home price in New Mexico is about $160,000. The average 2014 mill levy is 29.15 mills. If this bill passes, the annual revenue impact will be on the order of $9.1 million. Because of yield control and the way debt rates are set, the cities, counties, school districts, special districts and the state general obligation bond fund, will experience an insignificant revenue loss. What will happen however is that the full amount of exemptions ($9.1 million in tax obligations) will be shifted from the advantaged class of taxpayers to the remaining population.

TRD notes, "… this legislation does not restrict eligibility on the basis of assets or property value. While the likelihood of abuse at the $15,000 income level is remote, it is possible to structure finances to shield net worth and the real estate value when the only threshold for eligibility is recurring income alone."

PERFORMANCE IMPLICATIONS

If the constitutional amendment is approved by the voters, the LFC tax policy of accountability would <u>not</u> be met unless the enabling legislation directs TRD to assemble the data from the county assessors and report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the exemption and other information to determine whether the exemption deduction is meeting its purpose.

ADMINISTRATIVE IMPLICATIONS

None on the state. This will be a laborious process for county assessors. Each taxpayer must somehow prove both income and disability status. Any implementing legislation pursuant to this constitutional amendment will have substantial difficulty establishing fair and accurate procedures for claiming this exemption.

TECHNICAL ISSUES

“Modified gross income” is not defined in the Constitution. It is defined in statute at 7-2-2 NMSA 1978 as:
L. "modified gross income" means all income of the taxpayer and, if any, the taxpayer's spouse and dependents, undiminished by losses and from whatever source, including:
(1) compensation;
(2) net profit from business;
(3) gains from dealings in property;
(4) interest;
(5) net rents;
(6) royalties;
(7) dividends;
(8) alimony and separate maintenance payments;
(9) annuities;
(10) income from life insurance and endowment contracts;
(11) pensions;
(12) discharge of indebtedness;
(13) distributive share of partnership income;
(14) income in respect of a decedent;
(15) income from an interest in an estate or a trust;
(16) social security benefits;
(17) unemployment compensation benefits;
(18) workers' compensation benefits;
(19) public assistance and welfare benefits;
(20) cost-of-living allowances; and
(21) gifts;
M. "modified gross income" excludes:
(1) payments for hospital, dental, medical or drug expenses to or on behalf of the taxpayer;
(2) the value of room and board provided by federal, state or local governments or by private individuals or agencies based upon financial need and not as a form of compensation;
(3) payments pursuant to a federal, state or local government program directly or indirectly to a third party on behalf of the taxpayer when identified to a particular use or invoice by the payer; or
(4) payments for credits and rebates pursuant to the Income Tax Act and made for a credit pursuant to Section 7-3-9 NMSA 1978;

TRD points out that Article 8, Section 1 (B) of the State Constitution allows limiting residential valuation to account for owner occupancy, age and income. This joint resolution touches on all three current qualifications. However, this constitutional amendment also requires testing for disability status and, thus, would have to be enacted by the voters, before the provisions of the resolution could become law.

TRD suggests in this regard that the enabling legislation, should this constitutional amendment be passed by the voters, might contain additional tests to ensure that the benefits of this provision are the elderly poor who might have difficulty staying in their homes. TRD suggest that income and asset levels should be verified to make sure that the beneficiary of this exemption isn't a high net worth individual receiving non-taxable distributions income from trusts, annuities or other investments. The existence of a grantor trust, lifetime tenancy, a family LLC or other estate planning devices should be grounds for denying the exemption. The enabling legislation might disallow the tax exemption if, for example, the subject property exceeded twice the median residential value in the city, county or school district.

RELATIONSHIP

House Joint Resolution 7 is related to House Joint Resolution 6, which proposes an amendment to Article 8 of the state constitution to allow a property tax exemption for persons over seventy-five (75) years of age, with an annual income of fifteen thousand dollars ($15,000) or less annually.

LG/bb