

LFC Requester:

Laird Graeser

### AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

#### SECTION I: GENERAL INFORMATION

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Date Prepared: January X, 2025

Check all that apply:

Bill Number: HB 46

Original  Correction   
Amendment  Substitute

Sponsor: Rep. Eleanor Chavez

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing

Short Title: Real Property from Health-Related Equipment

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#### SECTION II: FISCAL IMPACT

##### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) indicate expenditure decreases)

##### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) indicate revenue decreases)

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

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

**BILL SUMMARY**

Synopsis:

This bill seeks to amend two sections of the Hospital Equipment Loan Act (“HELA”). The first section of the bill removes real property from the definition of “health-related equipment.” In so doing, the bill would prevent the New Mexico Hospital Equipment Loan Council (“NMHELCO”) from issuing bonds under the HELA “for the financing or refinancing of all or any part of the cost of” real property. *See* NMSA 1978, § 58-23-15. The second section prospectively removes the property tax exemption for real property purchased, acquired, leased, financed, or refinanced with bonds issued under the HELA before the effective date of July 1, 2025.

The bill’s third section establishes an effective date of July 1, 2025.

**FISCAL IMPLICATIONS**

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

**SIGNIFICANT ISSUES**

1. Conflict with Other State Law. The bill’s amendments may conflict with the provisions of NMSA 1978, Section 7-36-3, which was amended through the same legislation that added real property to the HELA’s definition of “health-related equipment.” *See* 2006 N.M. Laws, ch. 90, § 1; 2006 N.M. Laws, ch. 92, § 1. Section 7-36-3(C) provides:

Property interests of a participating health facility in health-related equipment purchased, acquired, leased, financed or refinanced with the proceeds of bonds issued under the [HELA] are exempt from property taxation for as long as the participating health facility remains liable for any amount under any lease, loan or other agreement securing the bonds, but not to exceed thirty years from the date the bonds were issued for the health-related equipment.

2. Prospective Application and Due Process. The bill would likely be construed as a prospective—not retroactive—tax. The bill’s language limits the removal of the property tax

exemption to the period subsequent to its effective date. Thus, the bill merely “imposes a present tax which is measured by an antecedent fact.” See *Hansman v. Bernalillo Cty. Assessor*, 1980-NMCA-088, ¶¶ 20-21, 95 N.M. 697 (concluding that “a statute is not retroactive simply because it draws on antecedent facts for its operations,” and that the repeal of a limitation on property tax valuations for tax years following the repeal’s effective date “is a clear instance of a statute acting prospectively on facts or conditions in existence prior to its enactment”). The *Hansman* Court further explained that “a taxpayer does not have a vested right in a tax rate for a previous year, even though the change in the tax rate is enacted in the current year.” *Id.* ¶ 19. Accordingly, the bill would not impair vested rights and need not be analyzed for any due process implications that a retroactive tax scheme may involve.

To the extent the removal of the property tax exemption is construed as a retroactive taxing scheme, a court may consider its impacts on a health facility’s due process rights. The New Mexico Court of Appeals, relying on *Welch v. Henry*, 305 U.S. 134 (1938), explained that when determining whether a retroactive taxing scheme constitutes a denial of due process, “it is necessary to consider the nature of the tax and the circumstances in which it is laid before it can be said that its retroactive application is so harsh and oppressive as to transgress the constitutional limitation.” *Hansman*, 1980-NMCA-088, ¶ 16. The “harsh and oppressive” standard “does not differ from the prohibition against arbitrary and irrational legislation that applies generally to enactment in the sphere of economic policy,” and the bill would therefore not violate a health facility’s due process rights if the retroactive application of the legislation “is supported by a legitimate legislative purpose furthered by rational means.” See *U.S. v. Carlton*, 512 U.S. 26, 30 (1994).

#### **PERFORMANCE IMPLICATIONS**

None noted.

#### **ADMINISTRATIVE IMPLICATIONS**

None noted.

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

See discussion in “Significant Issues” above.

#### **TECHNICAL ISSUES**

None noted.

#### **OTHER SUBSTANTIVE ISSUES**

None noted.

#### **ALTERNATIVES**

None noted.

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

#### **AMENDMENTS**

Consider amending amend NMSA 1978, Section 7-36-3(C) to reflect the amendments proposed to NMSA 1978, Section 58-23-29(B) to ensure consistency and address potential conflicts within state law.