

BILL ANALYSIS AND FISCAL IMPACT REPORT
Taxation and Revenue Department

February 12, 2025

Bill: SB-112

Sponsor: Senator Peter Wirth

Short Title: Higher Ed Housing Facility Property Tax

Description: This bill amends Section 7-36-4 NMSA 1978 to provide that residential housing facilities for the use of students or medical residents located on land owned by an exempt higher education institution but leased by the higher education institution to non-exempt entity for purposes of assisting the institution are exempt from property tax.

Effective Date: Not specified; 90 days following adjournment (June 20, 2025). Applies to 2026 and subsequent property tax years.

Taxation and Revenue Department Analyst: Lucinda Sydow

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY2025	FY2026	FY2027	FY2028	FY2029		
--	--	(Negative but minimal, See Narrative)			R	Counties, Municipalities, Property Taxing Districts
--	--	(Negative but minimal, See Narrative)			R	State General Obligation Bond Fund

* In thousands of dollars. Parentheses () indicate a revenue loss. ** Recurring (R) or Non-Recurring (NR).

Methodology for Estimated Revenue Impact: Tax & Rev was unable to obtain data to substantiate a fiscal impact of exempting residential housing facilities owned by an exempt higher education institution but leased to a nonexempt entity. Tax & Rev assumes this proposal will impact counties and municipalities who have state universities of higher education. These include Bernalillo County for the University of New Mexico, Doña Ana County for New Mexico State University, Socorro County for New Mexico Tech, San Miguel County for New Mexico Highlands University, Grant County for Western New Mexico University, and Roosevelt County for Eastern New Mexico University. To the extent these institutions have residential housing facilities that are leased to a nonexempt entity, the tax base in the respective counties will be decreased.

Local impacts of the legislation proposed in this bill will vary widely across the state depending on the local trends in property values, the acreage under lease in the county, as well as the remaining local authority to adjust property tax rates. All of these counties have remaining mills to impose at the county level and it is assumed any fiscal impact may be absorbed after yield control adjustments.

Policy Issues: The bill presents a question on the constitutionality of the proposed expansion of the exemption. On the one hand, the Constitution does not exempt property leased from an exempt entity. The institution of higher learning is exempt, but not the improvements it leases to a nonexempt entity. On the other hand, the New Mexico Supreme Court explained:

Despite the flexible nature of our analysis, “the exemption granted to educational and charitable institutions proceeds upon the theory of the public good accomplished by them and the peculiar benefits derived by the public in general from their conduct. The rationale for exemption depends

upon an implicit quid pro quo between the State and an exempt organization. Property which is exempt from taxation does not share in the burden of paying for the cost of government. Therefore, in exchange for its exempt status, the use of such property must confer a substitute substantial benefit on the public. A substantial public benefit is a benefit of real worth and importance to an indefinite class of persons who are a part of the public. [*El Castillo Ret. Residences v. Martinez*, 2017-NMSC-026, ¶ 32, 401 P.3d 751]

Arguably, the use of the property for residential housing for student or medical residents is a substantial public benefit on the public. But the constitutionality is questioned because the students and residents are not an “an indefinite class of persons who are part of the public.” Tax & Rev concludes that this proposal may be unconstitutional.

The expansion of property tax exemptions for residential housing facilities which provide students or medical residents at institutions of higher learning will continue to erode horizontal equity in property taxes as those in similar economic situations will no longer be treated equally. The bill will represent an erosion of the local property tax base, on which most local governments rely for their budgets and operations. Counties who have campuses of higher education will see a higher loss of property tax base than counties with no institutions of higher education. While the expansion of these exemptions will continue to erode horizontal equity in property taxes, there is the broader public good to lower the cost of higher education for students. Tuition costs continue to rise and this exemption may aid in lowering overall financial costs of pursuing a degree.

While there may be a broader public good to aid students of higher education, the cumulative impact of exemptions in the property tax base will require more tax revenue from fewer properties. More exemptions also adds complexity to the tax code for local county assessors and increases the costs of administration.

Technical Issues: None.

Other Issues: None.

Administrative & Compliance Impact: This bill presents little to no impact for the Tax & Rev Property Tax Division. County assessors will be more heavily impacted.