

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill No: SB 115a**

**49th Legislature, 1st Session, 2009**

**Short Title: Leased School Property Tax Exemptions**

**Sponsor(s): Senators Mark Boitano and Gerald Ortiz y Pino**

**Analyst: Peter B. van Moorsel**

**Date: February 13, 2009**

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**AS AMENDED**

**The Senate Judiciary Committee amendment:**

- **specifies that the tax exemption proposed in SB 115 will be effective in 2010 and subsequent property tax years; and**
- **requires that all savings accruing to the property owner are passed to the school or school district.**

**Original Bill Summary:**

SB 115, amends the *Tax Code* to exempt from property tax a property that is:

- leased to a public school district, public school, or charter school; and
- used exclusively for educational purposes.

**Fiscal Impact:**

SB 115 does not contain an appropriation.

The Taxation and Revenue Department (TRD) analysis of SB 115 reports that the bill would impose minimal fiscal impact on the state of New Mexico or local governments. According to TRD, “reductions in net taxable value caused by the exemption would, for the most part, be offset by very minor property tax rate increases applicable to essentially all taxpayers.”

**Issues (revised):**

TRD’s analysis of SB 115 identifies a potential constitutional issue pertaining to Article VIII, Sec. 3 of the New Mexico Constitution, which reads:

“The property of the United States, the state and all counties, towns, cities and school districts and other municipal corporations, public libraries, community ditches and all laterals thereof, all church property not used for commercial purposes, all property used for educational or charitable purposes, all cemeteries not used or held for private or corporate profit and all bonds of the state of New Mexico, and of the counties, municipalities and districts thereof shall be exempt from taxation.”

Citing this section, the TRD analysis states:

- “if property is not exempt under the state Constitution, Article VIII, Sec. 3, the Legislature cannot by statute make it exempt”; and
- “the Constitution only allows the Legislature to make personal property exempt by statute. Property leased, but not owned, by a school district is not exempt under Article VIII, Sec. 3 because it is not the “property of” the school district.”

However, there may be another interpretation more in line with the intention of SB 115. That is, because the constitutional provision exempts from taxation “all property used for educational or charitable purposes” [emphasis added] – and not all property owned by educational or charitable organizations – the exemption may be based upon use rather than ownership. If that is the case, then SB 115 might be said to clarify the application of the tax exemption provided by the state constitution.

**Related Bill:**

HB 132 *Educational Property Tax Exemptions* (identical)