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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 2/11/16  
**SPONSOR** Cook **LAST UPDATED** \_\_\_\_\_ **HJR** 16

**SHORT TITLE** No Tax or Fee on Certain Property Sales, CA **SB** \_\_\_\_\_

**ANALYST** Liu

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

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$104.0	\$0.0	\$104.0	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 174, HB 210, SB 146, SJR 14

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Taxation and Revenue Department (TRD)  
 Attorney General’s Office (AGO)  
 Mortgage Finance Authority (MFA)  
 Regulation and Licensing Department (RLD)

### SUMMARY

#### Synopsis of Bill

House Joint Resolution 16 proposes an amendment to Article 8 of the New Mexico Constitution to prohibit the imposition of a tax or fee on the transfer of title to real property when the transfer is the result of a sale of the real property.

### FISCAL IMPLICATIONS

According to the Secretary of State, costs of constitutional amendments are primarily dependent upon the number of constitutional amendments passed by the Legislature, length of the language contained in the amendments, and number of registered voters in the state. Cost factors to consider with each constitutional amendment include:

- publishing the statutorily required voter guide for 10 percent of registered voters,
- publishing the constitutional amendment language in one newspaper in each county in the state, in English and Spanish, for four weeks as well as providing

- translation and dissemination in indigenous and minority languages,
- printing costs as the increase in ballot length proportionately increases the cost of printing ballots, and
- leasing and deploying additional ballot on demand systems at voting convenience centers because longer ballots slow down printing speeds and increase waiting times for voters.

As of December 31, 2015 there were nearly 1.2 million registered voters in the state. The SOS anticipates growth in voter registration as a result of online registration options and participation levels in a presidential election year.

The price for amendments in the 2014 general elections for constitutional amendment publication in English was 63 cents per line per newspaper (33) for the first run, and 49 cents per line per newspaper (33) for the additional three runs. The cost of the publication in Spanish was the same per line costs, and was published in four newspapers. The total costs of publications was wholly dependent upon the number of constitutional amendments appearing on the ballot and therefore requiring publication. For example, in 2010, the publication cost was \$520 thousand for five constitutional amendments. As such it was approximately \$104 thousand per amendment to do only the constitutionally-required publication.

## **SIGNIFICANT ISSUES**

TRD provided the following:

New Mexico does not currently impose “title transfer fees.” Title transfer fees are typically flat fees or “percentage of value” fees that are set at low rates. However, as the resolution is drafted, it could create a gross receipts tax (GRT) exemption, intended or unintended, for property developers, owner-builders, or speculative builders (i.e. taxpayers engaged in sales of real property that they own, improve, and then sell). For example, under current law, when a developer builds homes in a residential subdivision on land it owns, and then sells the homes (homes once constructed constitute real property), the developer is subject to GRT on the value of the homes and improvements, but gets a deduction for the value of the land (See Section 7-9-53 NMSA 1978). In this situation, there is a “tax” (the GRT) on the transfer of the title to the real property as a result of the sale of real property. In short, such a situation would appear to fall within the language of the prohibition even though the GRT collected is intended to capture tax on the value of only the improvements. See TRD’s analysis attached to this FIR for more information.

According to MFA, real estate transfer taxes can be used to fund specific initiatives, such as affordable housing. In the case of affordable housing, real estate transfer taxes can be structured to apply to the sale of high-cost homes to create affordable housing in high-cost communities. The City of Santa Fe previously proposed a similar real estate transfer tax for affordable housing that was voted down by voters.

## **RELATIONSHIP**

HB 210, SB 146, SJR 14, and this bill relate to real property. HB 210 raises the limitation on increases in residential property valuation and allows the limitation to apply to a change in

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ownership of the property. SB 146 authorizes the use of a “scrivener’s affidavit” to correct a drafting or clerical error in an instrument affecting the title to real property. SJR 14 proposes a constitutional amendment to allow the legislature the authority to enact legislation that would have the effect of allowing local governments to abate property taxes on some real property commercial projects if those projects were located in county-designated economic development zones or revitalization zones.

### **OTHER SUBSTANTIVE ISSUES**

According to AGO and RLD, this bill historically has been supported by the land sale industry, including realtors and title companies. If a transfer tax or fee were imposed on the sale of real property, it would make home sales or other land sales more costly. This bill is an initiative on the part of the Realtors Association of New Mexico and the National Association of Realtors to preclude any future legislative attempt to impose a “transfer tax” on the sale of real property.

SL/jle