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FISCAL IMPACT REPORT

SPONSOR Wirth/Romero, A. **LAST UPDATED** 1/20/26
ORIGINAL DATE 2/5/25
BILL NUMBER Senate Bill 112/aHRTC
SHORT TITLE Higher Ed Housing Facility Property Tax
ANALYST Graeser

REVENUE*
(dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
Property Tax			Nominal loss of (20.0)			Recurring	General Obligation Bonds
			Nominal loss of (681.0)			Recurring	APS, Bern Co, ABQ, UNMH, AMAFCA,

Parentheses ( ) indicate revenue decreases.
*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Bern Co Assessor	No fiscal impact	No fiscal impact	No fiscal impact		Recurring	

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From
State Land Office (SLO)
Higher Education Department (HED)
University of New Mexico (UNM)
San Juan Community College (SJCC)
Department of Finance and Administration (DFA)
New Mexico Attorney General (NMAG)
New Mexico State University
New Mexico Independent Community Colleges (NMICC)

Agency Analysis was Solicited but Not Received From
New Mexico Counties (NMC)
New Mexico Municipal League (NMML)
Taxation and Revenue Department (TRD)

Synopsis of HTRC Amendment to Senate Bill 112

The House Taxation and Revenue Committee amendment to Senate Bill 112 adds "exclusive" to the provision so that the exemption now reads:

> "…improvements, are exempt if the improvements are: (a) residential housing facilities for the ***exclusive*** use of students or medical residents of an exempt institution of higher learning enumerated in Article XII, Section 11 of the Constitution of New Mexico;"

SUMMARY

Synopsis of Senate Bill 112

Senate Bill 112 (SB112) amends Section 7-36-4 NMSA 1978 of the Property Tax Code to allow a limited real property tax exemption. This new exemption would apply to student housing built on land owned by an institution of higher education and leased to a nonexempt entity to manage and collect rents.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or June 20, 2025, if enacted. The exemption would first be effective for the 2026 property tax year.

FISCAL IMPLICATIONS

The HTRC amendment does not affect the fiscal impact of the exemption. The fiscal impact is shown as "nominal" because the assessment is being litigated and there may be an exemption without the provisions of this bill.

The University of New Mexico (UNM), which has two housing complexes built on university land that are owned by the university and leased to a private company, indicates the bill would preserve the affordability of on-campus student housing and encourage future public-private partnerships to address critical student housing needs on campus.

UNM reports the following, which provides an estimate of the near-term fiscal impact:

> If enacted, SB112 would eliminate property tax liabilities for leasehold interests held by private entities in public-private partnerships (P3) arrangements for student housing. Without this exemption, UNM and similar institutions will face challenges in securing future P3 arrangements, limiting the development of affordable on-campus housing.
>
> Without this exemption, the increased costs to the private entities will be passed on to students as increased rents for students. The estimated annual property taxes for UNM P3 facilities will be:
>
> Lobo Village - $350,000
> Casas del Rio - $350,000
>
> The average monthly rent would increase by approximately $33.91 for Lobo Village and $38.18 for Casas del Rio. For context, the current average monthly rent is $768.11 at Lobo Village is and $687.99 at Casas del Rio.
>
> At present, 43 percent of UNM on-campus student residents are housed in either Lobo

> Village or Casas del Rio, so rent increases on these students will have a substantial negative impact on housing affordability. Availability and accessibility of housing is a major public policy issue at the local, state and national level.
>
> The SB112 exemption would ensure on-campus housing costs remain stable, promoting student retention and academic success while fostering private investment in future housing projects.

UNM has assumed this property tax exemption since first entering an agreement with American Campus Communities (ACC), Inc., although the assumption that property tax exemption may be unsound, and the amendments proposed in SB112 might not resolve the issue.

From the estimates provided by UNM, the market value of each structure is about $21.7 million (based on being subject to 48.26 mills of property tax.). The average increase in rent attributed to the imposition of property tax after the sale implies there are 864 beds/rentable units in Lobo Village and 1,026 beds/rentable units in Casas del Rio. Using these figures and the average rent in each area further implies that rents would increase by 4 percent for Lobo Village and 5.5 percent for Casas del Rio, less than the estimates in UNM's analysis. It should also be noted assessments of the properties would be subject to a rule limiting increases to 3 percent after the first year.

New Mexico Independent Community Colleges (NMICC) indicates San Juan College and New Mexico Military Institute have student housing but would not be protected by the provisions of this bill because these institutions are not constitutional.

New Mexico State Land Office (SLO) notes:

> While the bill does not have a direct fiscal impact on SLO, the lack of clarity regarding the application of the fractional interest statute creates business uncertainty that may negatively impact earnings from state trust lands. This uncertainty has been driven recently by some county assessors taking a more aggressive approach in their interpretation and application of NMSA 1978 Section 7-36-4 (B) (1).
>
> State trust lands were granted to the state from the federal government for the purpose of generating revenue for public institutions, primarily educational for purposes. This framework relies on the leasing of state land, including state-owned improvements to those lands in certain circumstances, to various public and private entities. SLO does not believe it is constitutionally permissible to tax state-owned property (including state-owned improvements) under Article VII, Section 3 of the State Constitution, because the earnings from leases of state trust lands directly benefit the public. Money earned by the SLO is money that taxpayers do not need to come up with to support public schools, universities and hospitals throughout the state. See, e.g., *El Castillo Ret. Residences v. Martinez*, 2017-NMSC-026, ¶ 32, 401 P.3d 751.
>
> Imposing a tax on a lessee's leasehold interest in state-owned improvements necessarily affects the lessee's *pro forma* calculation, and thus the amount they are willing and able to pay in rent. See, e.g., *Cutter Flying Service, Inc. v. Property Tax Department*, 1977-NMCA-105: "We think there can be little doubt that, should these valuations be allowed to stand, it would have an adverse effect on the rents and fees that the City could charge in the future. And thus, ultimately, the City would bear a large part of the economic burden of the tax"; *United States v. Detroit*, 355 U.S. 466, 472 (1958): "It is undoubtedly true, as the Government points out, that it will not be able to secure as high rentals if lessees are taxed for using its property."

If assessors are allowed to tax state-owned improvements, that will directly lead to reduced income to state land trust beneficiaries, presumptively in the amount of the taxes levied. Of more concern would be prospective lessees that decline to bid on state trust lands because the tax levy renders their business plan infeasible.

Improvements owned by private parties that are situated on leased state trust lands are, and should remain, subject to property taxation.

SIGNIFICANT ISSUES

Adding "***exclusive*** use of students or medical residents" to further define the limitation of the exemption does not resolve any of the conflicts surrounding 7-36-4 NMSA 1978.

The bill makes changes to 7-36-4 NMSA 1978, which may relate to a protest of a property tax assessment relating to UNM and American Campus Communities (ACC). Following a protest of property taxes assessed, the Bernalillo County Valuation Protest Board sustained the county assessor's valuation and assessment. This decision was subsequently appealed to the 2nd District Court, which sustained the decision and order of the Bernalillo County Valuation Protest Board. The ruling was appealed to the Court of Appeals, which again sustained the valuation and assessment in a decision published November 12, 2025.

The following information has been obtained from the decision and order, with subsequent notice of appeal to the 2nd District Court. Further evidence and analysis has been extracted from the appeal of the 2nd District Court's decision.

Lobo Village was constructed in 2012 by American Campus Communities (ACC), Inc and leased by UNM to ACC. Casas del Rio was similarly constructed in 2013 by American Campus Communities (ACC), Inc. While there is no evidence that title was passed to UNM and the properties subsequently leased by UNM to ACC, the text of the leases establishes that UNM owns the improvements and grants ACC the right to sublease the properties to UNM students and UNM will receive 10 percent of the rents. In filings, both UNM and ACC contend improvements to the property either qualified for the educational exemption or the exemption for property owned by a governmental entity, and the current status of litigation holds that the assessor's valuation and assessment have been sustained otherwise.

Prior to December 2020 the properties were not valued or placed on the tax rolls by the Assessor. On November 3, 2020, the Assessor valued the properties and placed them on the tax rolls. In December 2020, the Bernalillo County Treasurer issued tax bills for Lobo Village for years 2012-2020, and for Casas del Rio for years 2013-2020. A tax bill in excess of $6 million was issued. ACC was joined by UNM in protesting this bill based on the constitutional educational exemption. The decision of the protest board was that ACC had never filed the paperwork to claim the exemption and, therefore, had no standing to protest because there had not been a denial of an exemption. The subsequent appeal led to the district court sustaining the assessment.

Earlier history adds to the controversy. In 1975, the Legislature proposed a constitutional amendment allowing it to exempt fractional interests. Of note, the amendment did not affirmatively address the taxability of fractional interests in the absence of the amendment. The amendment was defeated in the 1976 general election. In 1977, after the failed constitutional amendment, the Legislature redefined "fractional interest" to exclude leaseholds over 75 years. Subsequent bills

and amendments did little to resolve the situation.

The section of statute to be amended by this bill has been amended four times (1977, 1985, 1995 and 1998)[1] since it was first enacted in 1976. To summarize current law: Fractional interests of profit-making/nonexempt entities in real property owned by exempt entities are exempt (although this exemption of realty without a constitutional amendment allowing this exemption is the source of the controversy). However, if the improvements are owned by the nonexempt entity, then the leasehold is taxable. Another exception to the exemption is if the nonexempt entity leases the improvements from the exempt entity that owns the property with its improvements.

LFC staff are concerned with a constitutional provision that may conflict with the bill -- Article VIII, Section 3. In effect, this section prohibits the Legislature from enacting a property tax exemption for real property.

NMAG amplifies this concern.

> Under Article VIII, Section 3 of the New Mexico Constitution, "all property used for educational or charitable purposes," as well as property of the state, "shall be exempt from taxation." However, any property "acquired and used for educational or charitable purposes" that would have been, prior to the transfer of ownership subject to tax for the purposes of bond indebtedness, the property "shall not be exempt . . . from the payment of such taxes[.]" To the extent SB112 would exempt such property from taxation, it would raise possible constitutional concerns under Article VIII, Section 3.

NMICC points out an interesting technical issue:

> SB112 applies only to institutions enumerated in Article 12, Section 11 of New Mexico's constitution.
>
> New Mexico's independent community colleges are authorized in 21-13-1 NMSA 1978; they are not included in SB112's statutory clarification. Currently the NMICC institutions not enumerated in the constitution that have residential housing operate that housing themselves and clarification is not needed at this time. The statutorily authorized NMICC members with residential housing are San Juan College and New Mexico Junior College.
> Any improvements made to higher education institution residential housing on institution land, regardless of whether the improvements were made by the institution or a private entity that operates the facility for the institution, are made for the benefit of the students. Property put to use for educational uses are generally exempt from property taxes.
>
> NMICC recommends the sponsor amend SB112 to include institutions authorized in 21-13-1 NMSA 1978.

SLO continues its in-depth analysis of this issue:

> The Commissioner of Public Lands manages approximately nine million acres of land for the trust beneficiaries. State trust lands were provided to the state with the sole purpose of generating revenue for public schools and other state institutions, such as hospitals and universities, throughout the state. Any taxation that has the effect of diminishing income from state trust land is categorically prohibited by Section 10 of the Enabling Act. In *Lassen v.*

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[1] 1953 Comp., § 72-29-2.2, enacted by Laws 1976, ch. 61, § 1; 1977, ch. 285, § 1; 1985, ch. 109, § 3; 1985, ch. 225, § 6; 1995, ch. 12, § 8; 1998, ch. 49, § 1.

Arizona, 385 U.S. 458, 468 (1967), The U.S. Supreme Court held that "the grants cannot be too carefully safeguarded for the purpose for which they are appropriated [and] the purposes of Congress require that the Act's designated Beneficiaries derive the full benefit of the grant." (internal punctuation omitted).

The decision by one county assessor to pursue a novel interpretation of Section 7-36-4 to apply to leasehold interests in improvements on state trust land has created confusion around the issue in a way that potentially runs afoul of the Enabling Act and the New Mexico constitution. The confusion is related to the text of Section 7-36-4 that imposes taxation not just on improvements *owned* by lessees of state trust land, but also on improvements *owned by the state* and only leased to the private lessee.

It would presumptively be unconstitutional to value and tax property owned by an exempt entity. See, N.M. Const. Art. VIII, Sec. 3. The potential for assessors to tax any interest in state trust land acts as a tax on that land itself. Amending the bill as suggested below would confirm that all interests in state trust land and state-owned improvements are exempt from taxation. Lessee-owned improvements would continue to be subject to taxation.

A separate issue raised in the FIR is the question of whether the Legislature can exempt "fractional interests," which is generally interpreted to mean a leasehold interest. The FIR indicates that the purpose of the bill is to allow a "limited real property tax exemption." That characterization is not necessarily correct, however. While there is some ambiguity as to how leaseholds are treated under New Mexico law, the most recent, and most definitive, statement is found in *Resolution Trust Corporation v. Binford*, 1992-NMSC-068, holding that "New Mexico courts have always held that leaseholds are personal property; yet we have also noted that a leasehold is an interest in land." The *Binford* court characterized leaseholds as "hybrid" because they are personal property but are conveyed as real property: "The hybrid nature of leaseholds necessitates that they be conveyable in the same manner as real estate, notwithstanding the fact that a leasehold is personal property." Moreover, under State Land Office rule 19.2.9.18.A NMAC, the "interest of a lessee in a business lease and in the improvements is a personal property interest." Therefore, a fractional interest is personal property, subject to exemption by the Legislature.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB112 is in direct conflict with House Bill 295 (HB295), which exempts fractional interests in transmission lines and associated equipment owned by RETA and leased to developers. Some of the same issues may have triggered House Bill 46, Real Property from Health-Related Equipment.

OTHER SUBSTANTIVE ISSUES

UNM provides several comments on collateral issues:

1. Exempting these properties from taxation acknowledges their educational purpose and reinforces the public mission of universities to provide affordable housing.
2. The proposed exemption aligns with public policy objectives of promoting education and student welfare.
3. The bill also reinforces the viability of P3 structures for public universities.

ALTERNATIVES

SLO proposes an amendment:

The goal of SB112, HB295, and the SLO concerns expressed herein could all be realized in a simpler and no less effective manner by making the following revision to Section 7-36-4(B)(1):

(1) improvements of land of an exempt entity if the improvements are owned or leased by a nonexempt entity; these improvements are subject to valuation for property taxation purposes and to property taxation to be paid by the nonexempt entity; and

… improvements of land of an exempt entity if the improvements are owned or leased by a nonexempt entity; these improvements are subject to valuation for property taxation purposes and to property taxation to be paid by the nonexempt entity; provided that improvements, including a leasehold interest in the improvements, are exempt if the improvements are owned by a governmental entity; and …

This proposed change avoids the specter of assessors attempting to tax interests in state-owned land. It would address the issue of potential taxation of UNM-owned dorms leased to private parties, taxation of RETA-owned transmission line infrastructure leased to private parties, and taxation of State Land Office-owned improvements leased to private parties.

To our knowledge, these are the only three types of state-owned improvements leased to private parties as to which there is a taxation issue.

UNM suggests other possibilities:

1. Maintain the current property tax structure, which will lead to higher student rents and reduced P3 investment.
2. Establish a state-level fund to offset property tax costs for P3 projects, though this would require additional appropriations.
3. Provide partial tax relief instead of a full exemption.
4. Explore alternative financing mechanisms to offset operational costs without increasing rents.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

SLO notes, “There has been a recent and novel effort by certain county assessors to levy property taxes on the leasehold interest of a lessee in state-owned improvements. Passage of the bill, amended as proposed above, would clarify that all interests in state-owned land and state-owned improvements are not taxable, while not affecting the ability of assessors to tax lessee-owned improvements located on state land.”

LG/rl/sd/hg/sgs/SL2/hj