F I S C A L I M P A C T R E P O R T

ORIGINAL DATE 1/28/19
SPONSOR Garcia, MP **LAST UPDATED** **HJR** 3

SHORT TITLE Property Tax Exemption For Disabled, CA **SB**

ANALYST Graeser

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		$200.0	$0.0	$200.0	NR	Sect of State Operating

Parenthesis ( ) indicate expenditure decreases

SOURCES OF INFORMATION
LFC Files

Responses Received From
Developmental Disabilities Planning Council (DDPC)
New Mexico Attorney General (NMAG)
Taxation and Revenue Department (TRD)
Department of Finance and Administration/Local Government Division (DFA/LGD)
Governor's Commission on Disability (GCD)

SUMMARY

Synopsis of Bill

House Joint Resolution 3 proposes an amendment to Article 8 of the Constitution to create an exemption from property tax for people that are 100 percent permanently disabled and with an annual household income of $15,000 or less. This exemption would include the community or joint property of married individuals. HJR 3 requires that those seeking the exemption would be responsible for proving their eligibility. The constitutional amendment also requires the $15,000 income ceiling be adjusted for inflation.

There is no effective date of this bill. It is assumed that the effective date is 90 days after this session ends. The joint resolution would be presented to the voters at the next general election in November 2020, or a special election prior to that date. Any enabling legislation should conform to the regular property tax year which begins January 1 each year.

FISCAL IMPLICATIONS

This bill creates or expands a tax expenditure with a cost that is difficult to determine but likely significant. LFC has serious concerns about the significant risk to state and local revenues from tax expenditures and the increase in revenue volatility from erosion of the revenue base. The committee recommends the bill adhere to the LFC tax expenditure policy principles for vetting, targeting, and reporting or be held for future consideration.

Estimating the cost of tax expenditures is difficult. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for a tax expenditure may be ambiguous, further complicating the initial cost estimate of the expenditure's fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures.

Property tax exemption bills are particularly difficult to analyze. Property tax operating rates are subject to adjustment in each jurisdiction based on the amount of new construction and a concept called "valuation maintenance" to account for natural inflation of property values. One certainty of this proposal if authorized by the people is that assessments would decrease and bonding capacity in each jurisdiction would decrease. As TRD notes, there would be a general fund impact from gains attributed to individuals no longer qualifying for the low income property tax credit at 7-2-18 NMSA 1978. Los Alamos and Santa Fe Counties would also experience revenue gains from the implementation of the local option circuit breaker of 7-2-14.3 NMSA 1978.

If the joint resolution passes and is approved by the voters, it will have a small impact on beneficiaries and a more substantial effect of shifting tax burden between advantaged and disadvantaged taxpayers.

Note: TRD has provided the following revenue impact table which assumes that the constitutional amendment is approved by the voters and enabling legislation is enacted in the legislative session of 2021, following a vote of the people in the general election in November 2020. The table assumes that the impact would be for assessments effective for the 2021 property tax year and subsequent impacts on 2021 property tax year payments due in November 2021 and March 2022. Note also that the table does not include the effect of bond capacity reductions.

REVENUE (dollars in thousands)

Estimated Revenue						Recurring or Nonrecurring	Fund Affected
FY19	**FY20**	**FY21**	**FY22**	**FY23**	**FY24**		
			(14,600)	(14,700)	(14,800)	R	County Treasurers
			(700)	(700)	(700)	R	State General Obligation Bonds
			800	800	800		General Fund

Parenthesis ( ) indicate revenue decreases

TRD's methodology for estimated revenue impact: assuming a definition of one-hundred-percent permanently disabled as being a severe disability prohibiting employment (see Policy Issues below), US Census numbers indicate that 72 percent of those with a 'severe' disability are unemployed. Analyzing census numbers for populations 21 and over shows 15.9 percent having a severe disability, and therefore 11.6 percent are estimated to have a qualifying disability. Census numbers also indicate that home ownership among disabled is only 85 percent of that within the general population and income potential of disabled in New Mexico is 71.8 percent of the regular population. These adjustments indicate that a little over 3.6 percent of home owners may qualify for this new exemption. Estimates for taxable property values (with moderate yearly increases) and millage rates were then used to determine the loss of tax revenue.

Note that property tax is handled differently than nearly all other tax programs in that it has yield control which adjusts the tax rates (where possible) to make up for these losses. About 60 percent (weighted by value) of the residential property in the state still allows yield control, meaning only about 40 percent of these losses will be realized. The loss is mostly to county treasuries, with approximately 4.5 percent being experienced by the state General Obligation Bond Fund. Other revenue beneficiaries would experience small or large changes in revenue.

Similar US Census statistics as used above indicate that approximately 27 percent of persons 65 and over would qualify for the new exemption, and therefore would lose the deduction provided in statute 7-2-18. This would result in a gain to the General Fund.

SIGNIFICANT ISSUES

TRD points out that there is no definition given for "household income" in the proposed constitutional amendment. If the resolution is approved by the voters, the implementing legislation would have to provide a definition. Previous versions of this proposal have used modified gross income, as defined in the Income Tax Act, as the income concept. For the purpose of TRD's impact estimate presented above, the Federal Adjusted Gross Income was used. If, for example, New Mexico taxable income was used instead, significantly more taxpayers would qualify.

TRD also points out that the constitutional amendment provides no clear definition of "one-hundred-percent permanently disabled". However, other sections of New Mexico statutes define similar concepts. Statute 31-22-3 in the crime victim's chapter defines "permanent total disability" as a physical disability permanently incapacitating a person from performing in a gainful occupation. 22-11-36 also discusses being totally disabled involving unable to retain gainful employment. Likewise the IRS in publication 534 defines permanent and total disability as a condition that prohibits gainful employment. For these reasons, US Census statistics for the number of New Mexicans with a "severe" disability who are not employed was used as a starting point in the analysis. A clear definition of qualifying disability would have to be provided in the enabling legislation.

Abuse of this exemption might be possible via accounting practices which could reduce whatever definition for household income that is chosen. For this reason it is suggested that a maximum value be defined for qualifying properties.

LFC staff note that the disabled population in general might be equally harmed by the provisions of this constitutional amendment as would be helped. Because of yield control, operating rates would adjust upwards because of negative valuation maintenance triggered by the exemption. Similarly, debt rates would increase slightly so that the required level of debt service on general obligation bonds were met. Disabled and (elderly citizens) living in rental housing might have rents increased to account for the increase in operating and debt rates caused by the exemption for low-income disabled homeowners.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability might not be met unless TRD or DFA/LGD were required in the enabling legislation to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers claiming the exemption and other information to determine whether the exemption is meeting its purpose.

ADMINISTRATIVE IMPLICATIONS

The provisions of the constitutional amendment if implemented would increase the administrative burden on county assessors significantly, depending on the number of properties covered by the exemption.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HJR-2 proposes a similar property tax exemption for low-income elderly.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy**: Revenue should be adequate to fund needed government services.
2. **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity**: Different taxpayers should be treated fairly.
4. **Simplicity**: Collection should be simple and easily understood.
5. **Accountability**: Preferences should be easy to monitor and evaluate

Arguably, the provisions of this proposed constitutional amendment abridge all five of the LFC tax policy principles.

LG/al