

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: HB2221**

**Bill Subtitle: TO CREATE THE ARKANSAS EDUCATION HOMESTEAD EXEMPTION ACT; AND TO CREATE AN ADDITIONAL HOMESTEAD EXEMPTION.**

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### **Basic Change :**

Representative Dotson

This bill adds a real property tax exemption for taxpayers who are eligible for the homestead property tax credit as provided in Ark. Code Ann. § 26-26-1118. Eligible property owners must be parents or guardians of students from 5 to 17 years of age that are enrolled in a private school or attend a home school. The exemption will reduce the assessed value of homes by \$100 per eligible child. The act is effective for assessment years beginning on or after January 1, 2013.

### **Revenue Impact :**

HB2221 does not have an impact on state general revenues or the Property Tax Relief Trust Fund. The bill provides for an exemption to be applied to the assessed value of a home which will reduce the amount of property tax due only.

### **Taxpayer Impact :**

Eligible taxpayers will receive a homestead property tax exemption to reduce the assessed value of their home.

### **Resources Required :**

None.

### **Time Required :**

Adequate time is provided for implementation.

### **Procedural Changes :**

Education of staff personnel of law change.

### **Other Comments :**

As written, it appears that the \$100 exemption would apply to the assessed value of the eligible homestead property which would minimally affect the overall property tax liability.

Section 3 refers to the homestead property tax exemption under § 26-26-1118. There is no exemption under Ark. Code ann. § 26-26-1118. Rather, it is a property tax credit of \$350.

Ark. Code Ann. § 26-26-310 requires the county collectors to certify to the CFO of the state the amount of real property tax reduction provided in § 26-26-1118, which is the \$350 property tax credit. HB2221 does not amend § 26-26-1118 to add the additional property tax reductions to the certification. Therefore, the additional tax reductions would not be reimbursed from the Property Tax Relief Trust Fund. The property tax losses would occur and remain at the local level.

If additional property tax reduction is left as an exemption, the local property tax loss would be allocated between school districts, cities, and counties in the same proportion that their millage rates

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compare to the total rate.

If the intent of the bill is for a \$100 per child reimbursement from the Property Tax Relief Trust Fund, the provisions of the bill must be amended into § 26-26-1118 and not an additional section referenced as § 26-3-311. At present, there are 28,600 children enrolled in private schools in Arkansas with 16,405 attending home school. Assuming 90% of private school children reside in owner-occupied homes and 67% of home school students reside in owner-occupied homes, if the intent is to provide an additional credit against the property tax due of \$100 per child, the current annual cost to the Property Tax Relief Trust fund would be \$3.7 million.

### **Legal Analysis :**

HB2221 amends Subchapter 3 of Chapter 3 of Title 26, concerning property tax exemptions, to grant a homestead property tax "exemption" of \$100.00 per child for taxpayers who are eligible for "exemption" under the provisions of Ark. Code Ann. §26-26-1118 and who are the parents or guardians of a child between the ages of 5 and 17 that are either enrolled in private school or attending home school. As written, a taxpayer could have a child or children enrolled in public school and well as in private school or home school and the taxpayer would still receive an "exemption" of \$100.00 per child in the household.

The bill raises constitutional concerns. First, it may be subject to challenge under the Equal Protection and Privileges and Immunities Clauses of the Arkansas and United States Constitutions as it grants one class of citizens, taxpayers with children not attending public school, a property tax exemption not available to taxpayers without children or with children in public school.

Second, Article 14, §3 of the Arkansas constitution requires the General Assembly to provide for the support of common schools and requires a uniform rate of ad valorem property tax to be levied on the assessed value of all taxable property in the state. Similarly, the provisions of Article 16, §§5 and 15 of the Arkansas Constitution require that all real and tangible personal property (including homesteads) subject to taxation be taxed according to its value, with only certain exceptions. The constitution requires statewide equality and uniformity of the property tax burden of Arkansas taxpayers. See Washington v. State, 13 Ark. 752 (1853) and Summers Chevrolet, Inc. v. Yell County, 310 Ark. 1, 832 S.W.2d 486 (1992). Although the bill does not change the valuation of property, it does have the effect of reducing the tax burden of a specific class of citizens which ultimately results in risking the adequacy of school funding as well as an unequal property tax burden in Arkansas.

Third, under Article 16, §6, all laws exempting property from taxation shall be void. Exceptions to these provisions are found at Amendment 22 to the Arkansas Constitution, which exempts homesteads with a value of \$1000.00 from property tax and authorizes the General Assembly to declare property valued up to \$2500 to be exempt, and at Amendment 79 to the Arkansas Constitution, which authorizes the homestead property tax credit (not exemption) found at Ark. Code Ann. §26-26-1118. HB2221 exceeds the scope of the General Assembly's authority under the provisions of Amendments 22 and 79 to the constitution as it concerns property tax on homesteads.

Beyond the constitutional concerns presented by the bill, it should be noted that the provisions of Ark. Code Ann. §26-26-1118, identified in the bill as providing a property tax exemption, do not provide an exemption from property tax as stated in the bill but instead provide a tax credit. The statutory provisions of Ark. Code Ann. §26-26-1118, derived from Amendment 79 to the Arkansas constitution,

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prohibit the credit from exceeding the amount of tax due and place certain requirements upon county assessors and property owners that are necessary to administer the credit and ensure reimbursement to the county and county taxing units of the tax reduction resulting from the credit. HB2221 gives no consideration to these concerns.

The act will be effective for assessment years beginning on or after January 1, 2013.