

Department of Finance and Administration

Legislative Impact Statement

Bill: HB2221

As Engrossed: 4/6/2013

Bill Subtitle: TO CREATE THE ARKANSAS EDUCATION HOMESTEAD PROPERTY TAX CREDIT ACT; AND TO CREATE AN ADDITIONAL HOMESTEAD PROPERTY TAX CREDIT.

Basic Change :

Representative Dotson

Engrossment 04/06/13 --- House Amendment 1 --- Amends the bill to provide for a \$100 per child property tax credit to be applied against property taxes due. 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 tax credit will reduce the amount of property tax due by \$100 per eligible child. To administer the tax credit, County Assessors would establish and maintain procedures and records to allow property owners to provide the names and ages of their children that attend private schools or are home schooled. Annually, parents would have to provide updating information for additions and deletions to the property tax records for children that become eligible for the credit and to delete those no longer eligible.

Original Bill --- 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 :

\$3.7 Million in Additional Reimbursement to County Collectors from the Property Tax Relief Trust Fund for Property Tax Credits Issued

[At present, there are 28,600 children enrolled in private schools in Arkansas with 16,405 attending home school. Impact assumes 90% of private school children reside in owner-occupied homes and 67% of home school students reside in owner-occupied homes.]

Taxpayer Impact :

Eligible taxpayers will receive additional homestead property tax credits to reduce the amount of property taxes they must pay.

Resources Required :

No resources required for DFA.

Time Required :

Adequate time is provided for implementation.

Procedural Changes :

Education of staff personnel of law change.

Legal Analysis :

HB2221, as amended under H1 and engrossed April 6, 2013, amends Subchapter 11 of Chapter 26 of Title 26, concerning the homestead property tax credit and limitation on increase of property's assessed value, to grant an additional property tax credit. Under this bill, persons eligible for the existing property tax credit of \$350.00 shall receive an additional tax credit in the amount of \$100.00 for each child: 1) for whom the taxpayer claiming the credit is the parent or legal guardian; 2) who is

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between 5 and 17 years of age; and 3) who is either enrolled in private school or is home schooled. No assessment shall be reduced to less than \$0.00 after application of all applicable credits.

This version of the bill attempts to address certain concerns raised by DFA but still raises constitutional concerns. First, it will 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 credit that is 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 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. Also, Amendment 79 authorized the General Assembly to provide a property tax credit on a homestead. The provision of a property tax credit for other purposes is outside the scope of the authority granted by Amendment 79 and results in real property being taxed differently based on how the taxpayer's children are educated. This causes the property to be taxed in a manner other than according to its value.

Local governments must be reimbursed for the credit from the Property Tax Relief Fund. Under existing provisions of state law, property owners will be required to register proof of entitlement to the credit with the county assessor; however, the bill does not identify what a taxpayer will be required to produce in order to verify that a child is enrolled in private or home school. There is no mechanism in the bill to assess tax against taxpayers who falsely claim the credit.

Some of the provisions of existing law regarding the property tax credit will be difficult to apply to the credit in this bill. For example, under existing law the property remains eligible for the homestead credit in the year in which it is taken, even if the property is transferred to taxpayers who do not meet the criteria for the credit. Purchasers are required to notify the county assessor of any transfer and new use for purposes of determining whether the property will still be eligible for the credit. There is no corresponding requirement that requires notification when the taxpayer no longer qualifies for this new credit, which is based on factors other than use of the property. Additionally, there is no mechanism to recover the credit from either the transferor or purchaser if either benefits from a credit to which the property owner is not entitled, or from an owner who does not transfer the property but ceases to qualify for the credit.

The bill replaces the word "exemption" with the word "credit" except on page 1, line 25.

The bill does not contain an emergency clause.