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FISCAL IMPACT REPORT

ORIGINAL DATE 2/16/15
 SPONSOR Gonzales LAST UPDATED 3/12/15 HB 326/aHBEC
 SHORT TITLE Lodgers' Tax Audits SB _____
 ANALYST Malone

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate, but likely positive	Indeterminate, but likely positive	Indeterminate, but likely positive	Recurring	Various Local Governments

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 402, which eliminates an exemption from the occupancy tax.
 Duplicates SB 464

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Municipal League (NMML)
 Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of HBEC Amendment

The House Business and Employment Committee amendment to House Bill 326 adds language to clarify that there will be equal numbers of members on advisory boards who are owners or operators of lodgings subject to the occupancy tax within the municipality and members who are owners or operators of industries located within the municipality that primarily provide services or products to tourists.

Synopsis of Original Bill

House Bill 326 amends Sections 3-38-17.1, 3-38-17.3, 3-38-19, and 3-38-22 NMSA 1978, pertaining to the Lodgers' Tax Act. Section 3-38-17.1 is amended to permit a municipality or county, for good cause, to select any vendor for audit to verify the amount of gross taxable rent subject to the occupancy tax to ensure that the full amount of occupancy tax on that rent is collected.

Section 3-38-17.3 is amended to substitute the municipality or county for the attorney general

and district attorney as the entity charged with enforcing the Lodgers' Tax Act or any local ordinance adopted pursuant to the act.

Section 3-38-19 is amended to create the penalty of a petty misdemeanor and a fine up to \$500 or imprisonment for up to 90 days for a violation by any person of the new provision of the occupancy tax to participate and cooperate in an audit made pursuant to Section 3-38-17.1.

Lastly, Section 3-38-22 is amended to allow for an advisory board or more than five members in municipalities that impose an occupancy tax.

FISCAL IMPLICATIONS

Increased enforcement of local lodgers' tax compliance will likely lead to increased tax collection for local governments. However, the cost of enforcement is likely to increase as well.

SIGNIFICANT ISSUES

NMML notes that the current law may not adequately enable municipalities and counties to order audits and to compel compliance with the audit requirement. This bill will clarify the powers of local government to compel audits and to enforce the audit requirement.

In response to the duplicate legislation in the Senate (SB 464), the Office of the Attorney General (AGO) pointed out that who might be an authorized representative is left to the taxing authority. Presumably, it could be the city or county attorney, or it might be a private debt collection agency employing a private attorney. The Legislature might wish to consider explicitly providing authority for employing non-governmental collection agents, if that is the intent.

AOC notes that because HB 326 permits the action to be brought *only* by a municipality or county, through its duly authorized representative, there is a question of whether the AG, DA or a vendor would need to petition the municipality or county to bring an action, should notice of a violation become apparent to the AG, DA or a vendor.

The lodgers' tax is administered at the local level.

ADMINISTRATIVE IMPLICATIONS

AOC observes that while new laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase, there may be a question as to whether the HB 326 amendments related to enforcement would cause an increase or reduction in the number of actions brought for violations of the LTA, given that the authority to bring an action is shifted exclusively to a municipality or county, now granted authority by HB 326 to audit vendors for good cause.

DUPLICATION, RELATIONSHIP

Duplicates SB 464

Relates to SB 402, which eliminates an exemption from the occupancy tax.

TECHNICAL ISSUES

Regarding SB 464, AGO notes that the provision for other than random selection of vendors for audit has the potential for decisions on who to audit to be made at the behest of special interests.

This could lead to allegations of arbitrary and capricious enforcement, improper favoritism, or selective prosecution. The Legislature may wish to consider amending NMSA 1978, Section 7-1-8.9 to authorize the Taxation and Revenue Department to reveal information on gross receipts taxes reported by lodging businesses within the jurisdiction, so that a discrepancy between what is reported to the Department and what is reported locally can form an objective selection criteria.

CEM/aml/bb