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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/18/06  
 SPONSOR Jennings LAST UPDATED 2/15/06 HB \_\_\_\_\_  
 SHORT TITLE ELIMINATE DAILY BED SURCHARGE SB 88/aHTRC  
 ANALYST Schardin

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	See Fiscal Impacts		

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY06	FY07	FY08		
(6,666.7)	(20,900.0)		Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB113, HB365, HB84, HB162.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Taxation and Revenue Department (TRD)

Human Services Department (HSD)

### SUMMARY

#### Synopsis of HTRC Amendment

The House Taxation and Revenue Committee amendment to Senate Bill 88 adds an emergency clause. An emergency clause would make the provisions of the bill effective for the last four months of FY06. Adding an emergency clause makes Senate Bill 88 a duplicate of House Bill 365 and Senate Bill 113.

Synopsis of Original Bill

Senate Bill 88 repeals the daily bed surcharge by repealing Sections 7-1-6.45 and 27-11-6 NMSA 1978, as well as deleting the reference to the bed surcharge in Section 7-1-2 of the Tax Administration Act.

The bill’s effective date is July 1, 2006.

**FISCAL IMPLICATIONS**

**Fiscal Impact of Repealing the Bed Tax**

<b>REVENUE</b>	<b>FY 2006</b>	<b>FY 2007</b>
Federal Bed Tax Payments	-\$4,297	-\$13,470
State Bed Tax Payments	-\$1,703	-\$5,340
Private Bed Tax Payments	-\$667	-\$2,090
<b>TOTAL Revenue</b>	<b>-\$6,666.7</b>	<b>-\$20,900</b>
<b>APPROPRIATIONS</b>		
Medicaid Payments to Nursing Homes	-\$1,703	-\$5,340
<b>TOTAL Appropriations</b>	<b>-\$1,703</b>	<b>-\$5,340</b>
<b>Net Impact (Revenue less Appropriation)</b>	<b>-\$4,963</b>	<b>-\$15,560</b>

This fiscal impact analysis assumes the bed surcharge will be repealed for the last four months of FY06. The consensus revenue estimating group expects the bed surcharge to generate \$20.9 million general fund revenue in FY07. According to a joint estimate by TRD and HSD, about 90 percent of this \$20.9 million will come from Medicaid reimbursements: \$13.5 million from federal Medicaid matching funds and \$5.3 million from state Medicaid matching funds (based on an HSD projection that the federal match for this service will be 71.61 percent in FY07). The remaining 10 percent, or \$2.1 million, is paid by about 980 New Mexicans who pay the bed surcharge out-of-pocket.

In addition to this \$20.9 million general fund revenue reduction, repealing the bed tax should reduce state Medicaid reimbursements to nursing homes by \$5.3 million. This reduction will occur through action by HSD to reduce reimbursement rates rather than through legislation. Once these rates are reduced, the true impact on the state budget will fall from \$20.9 million to \$15.6 million (see table above).

The revenue decrease associated with repealing the bed surcharge is classified as recurring based on recurring revenue estimates reported by DFA and LFC in FY07 budget documents. It is likely that the consensus revenue estimating group will reclassify bed tax revenue as nonrecurring to reflect current law, which repeals the bed surcharge at the end of FY07 under current law.

**SIGNIFICANT ISSUES**

Under current law, a daily bed surcharge of up to \$10 per day may be imposed on licensed nursing homes, intermediate care facilities for mentally retarded (ICF-MR), and residential treatment facilities. The rate, which is set by HSD, is currently \$8.82 per day on nursing homes and ICF-MR, while the rate is \$0 for residential treatment facilities. Although the bed surcharge is levied on health facilities, it is understood that its cost is passed on to people who occupy beds at these

facilities. The bed surcharge is set to repeal on June 30, 2007.

The bed surcharge was passed in the 2004 legislative session along with a nursing home receipts personal income tax credit that directly reimbursed New Mexicans who paid the surcharge out-of-pocket (Section 7-2-18.12). The Centers for Medicare and Medicaid Services (CMS) said it would not pay the bed surcharge so long as this personal income tax credit made the federal government the only entity paying the surcharge. CMS withheld \$14.9 million in federal reimbursements before the credit was repealed in the 2005 legislative session.

In addition to repealing the nursing home receipts personal income tax credit, the 2005 Legislature passed a \$2.8 thousand per year personal income tax credit for persons over 65 with annual out-of-pocket medical expenses over \$28 thousand (Section 7-2-18.3 NMSA 1978). Although there was no strict relationship between repealing the original bed surcharge personal income tax credit and passing this new credit, it is generally thought that the new credit was meant to offset the costs for private-payers from the bed surcharge. The new credit applies to many taxpayers who do not pay the bed surcharge, but fails to shield people in long-term care facilities under 65 from the bed surcharge.

### **ADMINISTRATIVE IMPLICATIONS**

TRD reports it will experience administrative savings if the bed surcharge is repealed.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

As amended, Senate Bill 88 duplicates Senate Bill 113 and House Bill 365.

### **TECHNICAL ISSUES**

Although HSD reimbursement rates for nursing homes were increased when the bed surcharge was enacted, this bill does not guarantee that HSD must decrease them when the bed surcharge is repealed. Consider adding a contingent decrease in appropriations for Medical Assistance Division of HSD to the General Appropriation Act in the amount of \$5.34 million, contingent on repeal of the bed surcharge and requiring HSD to decrease nursing home reimbursement rates by the proper amount.

HSD notes that the bill repeals sections governing administration and enforcement of the bed surcharge but does not repeal Section 27-11-6 NMSA 1978, which allows HSD to impose the surcharge. This technical issue could be solved administratively if HSD reduces the amount of the surcharge from \$8.82 to \$0.

### **OTHER SUBSTANTIVE ISSUES**

Although the personal income tax credit for people over 65 with medical expenses over \$28 thousand per year was not a direct replacement for the original bed surcharge personal income tax credit, repeal of the bed surcharge may warrant repeal of the PIT credit for these people over 65. This credit is estimated to reduce personal income tax revenue to the general fund by about \$6.6 million per year.