

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

**ORIGINAL DATE** 02/06/14  
**LAST UPDATED** 02/13/14    **HB** 249/aHTRC

**SPONSOR** Gallegos, D.M.

**SHORT TITLE** Electronic Financial Institution Levy Warrant    **SB** \_\_\_\_\_

**ANALYST** Graeser

### REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16	FY17	FY18		
	NFI	NFI	NFI	NFI	NA	None

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Taxation and Revenue Department (TRD)  
 Regulation and Licensing Department (RLD)

### SUMMARY

#### Synopsis of HTRC Amendment

The House Taxation and Revenue Committee amendment to House Bill 249 requires agreement from the financial institution prior to TRD or law enforcement from serving an electronic warrant levy for collection of tax.

#### Synopsis of Original Bill

House Bill 249 requires the secretary of the Taxation and Revenue Department or the secretary's delegate or any sheriff or certified law enforcement employee of the department of public safety

to serve a warrant of levy upon a financial institution for the collection of tax from a delinquent taxpayer upon all property or rights to property of that individual. HB 249 authorizes warrants of levy to be served upon financial institutions in electronic format pursuant to the Electronic Authentication of Documents Act and the Uniform Electronic Transactions Act.

**EFFECTIVE DATE:** July 1, 2014.

### **FISCAL IMPLICATIONS**

TRD states that, "... no fiscal impact is expected, except in the benefits of greater efficiency in administering the provisions of the Tax Administration Act relating to collection of tax obligations through issuance and enforcement of a levy against the real property of a delinquent taxpayer. These cost savings and efficiency gains cannot be forecast, but largely relate to the operational costs incurred by both TRD and the financial institutions receiving the warrants of levy."

### **SIGNIFICANT ISSUES**

TRD notes that it, "... has broad authority to levy against a taxpayer's real and tangible property as required to satisfy the taxpayers obligations, subject to significant procedural and notice requirements before such warrants of levy may be issued. However, if a warrant of levy is served upon a financial institution in New Mexico, the financial institution must survey all checking accounts, savings accounts, escrows for collection, safety deposit boxes, trusts, certificates of deposit and all other accounts or places in which it may possess or hold any property or rights to property belonging to the taxpayer as of the date of service of the warrant of levy. Moreover, the financial institution upon which a warrant of levy is served must immediately surrender to TRD any property or rights to property of the taxpayer which that institution possesses or holds as of the date of service of the warrant. Failure to do so makes the financial institution liable to the state of New Mexico in a sum equal to the value of the property or rights not surrendered. If a financial institution upon which a warrant of levy is served knows of property or rights to property of the taxpayer in the possession of another as of the date of the service of the warrant of levy, it must immediately report this fact to the agent of TRD."

TRD further notes, "... in an environment where electronic transactions and communications are commonplace, there is a gain of efficiency where receipt of a notification of time sensitive communications and legal actions is facilitated. The bill provides that service of such warrant of levy notification must be in an electronic format that has been mutually agreed upon between the financial institutions and TRD, assuring that common communication and documentation protocols are resolved prior to implementing the provisions of this bill."

### **ADMINISTRATIVE IMPLICATIONS**

TRD expects that this bill will ease administration of imposing levies.

### **TECHNICAL ISSUES**

TRD points out a potential technical issue problem with electronic levies. Pursuant to 14-16-5 NMSA 1978 ...

**14-16-5. Use of electronic records and electronic signatures; variation by agreement.**

...

(c) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. *The right granted by this subsection may not be waived by agreement.* (emphasis added)

It seems a situation could develop in which a financial institution could refuse to accept a levy served by electronic means and rely on this subsection for its authority for the refusal. Nevertheless, this potential issue may not be a realistic impediment as a practical matter.

RLD also points out that, "... some of New Mexico's small state-chartered financial institutions may not have sufficient technological capabilities pursuant to the Electronic Authentication of Documents Act and the Uniform Electronic Transactions Act to process the warrant of levies contemplated by HB 249."

Both of these issues are resolved by the HTRC amendment which requires TRD to obtain agreement from the financial institution prior to serving the electronic levy warrant.

LG/svb