F I S C A L I M P A C T R E P O R T

ORIGINAL DATE 2/2/18
SPONSOR Small **LAST UPDATED** 2/7/18 **HB** 276/aHTRC

SHORT TITLE Employer Statements of Withholding **SB**

ANALYST Clark

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY18	**FY19**	**FY20**	**FY21**	**FY22**		
NFI	NFI	NFI	NFI	NFI	Recurring	General Fund

Parenthesis ( ) indicate revenue decreases

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Minimal					Taxation and Revenue Department

Parenthesis ( ) indicate expenditure decreases

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of HTRC Amendment

The House Taxation and Revenue Committee amendment strikes the penalty provision from the bill, removing the fiscal impact. This will have the effect of likely decreasing compliance with the bill's reporting requirements, thereby reducing the benefit to TRD in addressing tax fraud and other compliance issues. It will also prevent any possibility of a person, payor, or employer being assessed potentially significant penalties – a potential concern for these entities (particularly with possible awareness issues and the chance for disputes with TRD regarding "reasonable cause rather than willful neglect"), although TRD notes it would bring New Mexico laws more in line with federal reporting requirements and penalty provisions.

Synopsis of Original Bill

House Bill 276 requires annual statements of withholding from every employer for each employee, removing the current exemptions to annual reporting for employers required to file quarterly withholding returns or for employers required to file a wage and contribution report to the Workforce Solutions Department. An identical removal of the quarterly reporting exemption is made for every payor that withholds a portion of an individual's pension or annuity, placing all employers and payors into the same annual reporting requirement.

The bill requires this annual report to be filed by the end of January of the year following the relevant taxable year, replacing the current end of February requirement. The bill also requires employers with 25 or more employees and persons required to deduct withholding tax from winnings to file electronically by January.

Finally, the bill creates a penalty of 2 percent per month, not to exceed 20 percent of gross wages for the year, for any person, payor, or employer required to file the annual withholding report who does not do so by the due date. The penalty may be waived if the violation is due to reasonable cause rather than willful neglect.

The provisions of the bill apply to taxable years beginning on or after January 1, 2019, but the penalty provision is effective for taxable years beginning January 1, 2020.

FISCAL IMPLICATIONS

This is impossible to score with available data, but the bill would have some positive impact, potentially significant if this reporting helps reduce tax fraud or if there are a large number of entities who fail to comply with the reporting requirements.

SIGNIFICANT ISSUES

The Taxation and Revenue Department (TRD) provided the following analysis.

> The reporting requirement in this bill is required in most states. The intended purposes are to reduce tax fraud and identify potential identity theft; however, obtaining W-2s also increases compliance unrelated to tax fraud. The Internal Revenue Service (IRS) increased penalties for failure to properly and timely file W-2 forms.
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> Current federal law requires employers to file Copy A of Form W-2 with the Social Security Administration (SSA). The federal filing date is the last business day in January. This bill mandates that employers provide TRD the same information required by federal law. New Mexico statute references the Internal Revenue Code; several "income" definitions require information provided on Form W-2. By requiring employers to provide TRD with a duplicate copy of information provided to federal agencies, TRD is better equipped to adjudicate returns and ensure compliance with state tax law.
>
> Civil tax penalties are imposed in order to encourage compliance. As shown in the tables below, IRS dramatically increased both the per-statement penalty for informational returns and the maximum penalty amount between 2015 and 2016.

The fourth column in each table states the penalty for returns due during calendar 2017. Table 2 outlines the penalties for small businesses. The * footnote is "as adjusted for inflation." The IRS penalizes severely for intentional disregard.

Large Businesses with Gross Receipts of More Than $5 Million and Governmental Entities			
Time returns filed/furnished	**Returns due 01-01-2011 thru 12-31-2015**	**Returns due 01-01-16 thru 12-31-2016**	**Returns due 01-01-17 thru 12-31-2017**
Not more than 30 days late (by March 30 if the due date is February 28)	$30 per return/ $250,000 maximum	$50 per return/ $529,500* maximum	$50 per return/ $532,000* maximum
31 days late – August 1	$60 per return/ $500,000 maximum	$100 per return/ $1,589,000* maximum	$100 per return/ $1,596,500* maximum
After August 1 or Not At All	$100 per return/ $1,500,000 maximum	$260* per return/ $3,178,500* maximum	$260 per return/ $3,193,000* maximum
Intentional Disregard	$250 per return/ No limitation	$520* per return/ No limitation	$530* per return/ No limitation

Small Businesses with Gross Receipts $5 Million or Less			
Time returns filed/furnished	**Returns due 01-01-2011 thru 12-31-2015**	**Returns due 01-01-16 thru 12-31-2016**	**Returns due 01-01-17 thru 12-31-2017**
Not more than 30 days late (by March 30 if the due date is February 28)	$30 per return/ $75,000 maximum	$50 per return/ $185,000* maximum	$50 per return/ $186,000* maximum
31 days late – August 1	$60 per return/ $200,000 maximum	$100 per return/ $529,500* maximum	$100 per return/ $532,000* maximum
After August 1 or Not At All	$100 per return/ $500,000 maximum	$260* per return/ $1,059,500* maximum	$260 per return/ $1,064,000* maximum
Intentional Disregard	$250 per return/ No limitation	$520* per return/ No limitation	$530* per return/ No limitation

It is impossible to know how many entities will violate this reporting provision and incur penalties, but it will be critical for TRD to inform all reporting entities of this new requirement to avoid accidental penalties accruing for employers or persons unaware of this change. The bill seems to anticipate the need for time for broad awareness by delaying the penalty provision another year beyond the time the reporting requirement goes into effect.

ADMINISTRATIVE IMPLICATIONS

This might ease TRD's administrative burden by requiring electronic reporting in many instances and requiring timely annual withholding reports.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy**: Revenue should be adequate to fund needed government services.
2. **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity**: Different taxpayers should be treated fairly.
4. **Simplicity**: Collection should be simple and easily understood.
5. **Accountability**: Preferences should be easy to monitor and evaluate

JC/al