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

ORIGINAL DATE 2/07/2020
SPONSOR Harper/Martinez, J. **LAST UPDATED** 2/18/2020 **HB** 326/aSCORC/aSFC

SHORT TITLE Tax Changes **SB**

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY20	**FY21**	**FY22**	**FY23**	**FY24**		
	($2,400.0)	($3,500.0)	($3,500.0)	($3,500.0)	Recurring	General Fund (Investment Credit Provisions)
	Moderately positive because of more manufacturing projects with comp liability. IRB and GRT claims borne by state.				Recurring	Local Government (Local Option GRT, Local option comp, State Share GRT) – more liberal provisions of ITC
	About neutral, perhaps positive, net of increase from comp tax and GRT on equipment and deduction for ITC claims against local option GRT and Comp -- from enhanced IC rate				Recurring	Local Government (Local Option rate net ITC)
		See Fiscal Implications		Positive $1,000.0 to $4,000.0	Recurring	General Fund (CIT) –solar & wind farms
		See Fiscal Implications			Recurring	General Fund & Local Gov'ts (GRT & Comp Tax) change from origin to destination sourcing
		($0.0)	($0.0)	($0.0)	Recurring	General Fund & Local Gov'ts (GRT) – transportation changes (section 1 (F)(4)
		Minimal	Minimal	Minimal	Recurring	General Fund (GRT) repeal of 7-9-96 10% credit
		Positive	Positive	Positive	Recurring	Local Governments (GRT) rounding up GRT rates to .01% increments.

Parenthesis ( ) indicate revenue decreases

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	See Administrative Implications				TRD Operating

Parenthesis ( ) indicate expenditure decreases

Relates to 2019 HB6 [Ch.270 (partial veto)] and 2019 HB279 [Ch.274]. See also various versions of SB-184.

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
New Mexico Municipal League (NMML)
New Mexico Counties (NMC)

SUMMARY

Synopsis of SFC Amendment

Senate Finance Committee Amendment to House Bill 326 as amended by Senate Corporations and Transportation Committee extends the sunset of the investment credit (7-9A NMSA 1978) and delays some limitations that had been enacted in 2009 with a delayed impact date of July 1, 2020. These changes had been proposed in SB184, but amended out by HTRC. The amendments extend some provisions of the Investment Credit Act to July 1, 2030, repeal the $2 million limit on the value of equipment, and changes the employment requirements at the 1 job per $750 thousand investment up to $30 million and 1 job per $1 million investment over $30 million until July 1, 2030, when the entire investment credit act would expire. The amendment also increases the rate of credit from 5.125 percent effectively to the amount of the state GRT rate plus applicable local option GRT rates. The full effect of this portion of the amendment would take effect July 1, 2021 at the same time the local option compensating tax, as enacted in Chapter 270, Laws 2019 (HB6), would take effect. The amendment requires the tax credit claims be applied to the local option compensating tax or local option gross receipts taxes first, then to the state combined GRT, Compensating Tax and withholding tax liabilities. The 2009 amendment that limits all investment claims in a month to 85 percent of the total liabilities is retained.

Synopsis of SCORC Amendment

Senate Corporations and Transportation Committee amendment to House Bill 326 provides a sunset for one provision and several technical corrections:

1. Limits the deduction for independent power producers regulated by FERC to be considered manufacturers for the purpose of the uniform division of income for tax purposes act (UDITPA). This redefinition allows independent power producers with 80 percent of their property and payroll factors within New Mexico to use a sales-only apportionment factor in determining corporate income tax liability (CIT). This provision was apparently inadvertently omitted from last year's HB6, inserted in the original HB326 and limited in the SCORC amendment to taxable years that begin prior to January 1, 2024.
2. Expands the marketplace sellers gross receipts tax deduction in 7-9-117 NMSA 1978 to include both gross receipts tax and governmental gross receipts tax. This is a highly technical issue. The deduction in 7-9-117 NMSA 1978 was intended to prevent double taxation where the boundary between a marketplace seller and a marketplace provider was somewhat unclear. The amendment adds "governmental gross receipts" to the deduction. Amazon is the target marketplace provider that generally collects for the

property and collects and remits the gross receipts tax. 7-9-117[1] NMSA 1978ensures that only one tax is remitted. Adding "governmental gross receipts" may not be necessary, since the governmental gross receipts tax is owed only by New Mexico governmental units on specific transactions. However, even if not necessary, the amendment preserves the general rule that a gross receipts tax deduction creates a simultaneous compensating tax deduction and all other gross receipts tax deductions statutorily have parallel governmental gross receipts tax deductions. This addition will have no fiscal consequences.

Synopsis of Original Bill

House Bill 326 contains clean-up and clarification to provisions in Chapters 270 and 274 from the 2019 session (House Bill 6 and House Bill 479). The New Mexico Municipal League summarizes the bill's main provisions as: (1) providing greater definitiveness and coverage for gross receipts sourcing rules; (2) inserting a minimum local option gross receipts tax increment size; and (3) declaring the various local option gross receipts tax rates consolidated into either the municipal GRT or the county GRT to be increments of the municipal or county GRT.

Below is a partial list of significant proposed changes.

- Section 1 significantly revises and expands the concepts of destination-based sourcing in last year's HB6. Significant changes in reporting location provisions are discussed below.
- Section 2 provides relief to a taxpayer whom TRD determines by managed audit to owe gross receipts tax.
- Section 3 revises a portion of the UDITPA statute (7-4-10 NMSA 1978) to allow wind and solar farms that produce wholesale electric power and are regulated by FERC and not by PRC to qualify for "sales-only" factor in determining apportioned corporate income tax liability. (Note: SCORC amendment limits this inclusion to tax years beginning before January 1, 2024 and will have positive fiscal impact for FY24 and out years).
- Section 4 moves the definition of "construction-related services" as including design, architecture, drafting, surveying, engineering, environmental and structural testing, security, sanitation and similar services to the definition section 7-9-3.4 NMSA 1978. This is of use for section 1 relating to GRT location changes and is used in Section 5.
- Section 5 retains the expansion of the deduction for resale of construction services and construction-related services included in 2019's HB6. Essentially, the definition of construction-related services is moved from 7-9-52 NMSA 1978 to 7-9-3.4 NMSA 1978 and is purely technical and has no fiscal impact.
- Section 6 allows/requires municipal governments to enact rates in increments of one-hundredth percent, providing that the totals do not exceed the limits as established in last year's HB479 and compiled in 7-19D-9 NMSA 1978.
- Section 7 mirrors section 6 and allows/requires county governments to enact rates in increments of one-hundredth percent, providing that the totals do not exceed the limits as established in last year's HB479 and compiled in 7-20E-9 NMSA 1978.
- Section 8 is a temporary provision that considers any municipal or county local option enactments of repealed or consolidated rates required by provisions of last year's HB479 to be continuous enactments of currently allowed local option enactments. However, if

[1] 7-9-5 (C). A marketplace provider engaging in business in this state is not liable for amounts of gross receipts tax collected incorrectly due to the marketplace provider reasonably relying on erroneous information provided by the seller.

the original enactment was approved by the electorate, then any changes must be taken to the voters.

- Section 9 repeals the outdated federal prohibition on taxing sales through worldwide web sites. This section was originally enacted in 1998. The second repeal in this section is of the 10 percent credit for sales of certain services for resale.
- Section 10 repeals last year's version of 7-1-14 NMSA 1978 which proposed destination sourcing rules for Gross Receipts and Compensating tax purposes. Section 1 of this bill drafts new destination sourcing rules to replace last year's version.

The effective date of the Gross Receipts and Compensating tax and the Local Option Gross Receipts tax sections of the bill (1, 2, 4 through 7 and 10) is July 1, 2021. This allows TRD another year to prepare for the change to destination sourcing. The Corporate Income Tax sections of the bill (Sections 3 and 9) are applicable for tax years beginning January 1, 2020. It is assumed that the effective date of the temporary provision of Section 8 is 90 days after the end of the session (May 20, 2020).

FISCAL IMPLICATIONS

New Mexico Municipal League has provided an overview of the fiscal implications of the provisions of this bill:

> "The sourcing rule provisions mainly try to make clearer and more consistent what 2019 HB6 (whose full effect was delayed until 7/1/21) enacted. Some of [this bill's] ideas will produce positive revenues for local governments. For example, requiring construction services and construction-related services to be reported at the construction site (regardless of their professional nature) not only relieves New Mexico architects and engineers of lower-taxed out-of-state competition—thereby perhaps shifting business to New Mexico firms—but it also ensures that out-of-state businesses who do win contracts for New Mexico projects pay local taxes. The rule enacted last year for Uber/Lyft transportation services is generalized into a rule for all transportation services, which again helps local revenues overall although it may shift the locale to which some of the revenues are reported."

LFC staff, however, note that, in general, the change from origin (business location) sourcing to destination sourcing for "in-person" services will reduce municipal revenues and increase state revenues because the municipalities would lose the 1.225 percent state share. County revenues would largely be unchanged, except rural counties might gain at the expense of urban counties and relatively small amounts of specific local gross receipts tax rates, such as the fire protection GRT, which are applied only to transactions that occur in "county areas," also known as "county remainder."

Tax Expenditure. There is one provision in the bill that expands a tax expenditure. Inclusion of solar and wind farms regulated by FERC and not PRC as "sales only" apportionment factor has the potential to reduce corporate income tax (CIT) revenues, but will simultaneously assist in economic development of the renewable energy sector.

In 2019, Section 21 of HB6 removed the authority for nonutility independent power producers (IPPs) to take the manufacturers election. This election is typically used to lower tax liability by allowing taxpayers to only use a sales-only apportionment factor in calculating tax liability.

Under this bill, IPPs would again be allowed to take the manufacturers election, therefore the effect on general fund revenue through corporate income tax revenue is negative tested against the changes in last year's HB6.

Reductions of corporate income tax revenue from the inclusion of wholesale power generators as single sales factor is estimated to be about $3 million to $5 million. However, because the CIT provisions of HB6 had no official estimate, the December 2019 consensus revenue estimate for CIT was not increased by this $3 to $5 million. Therefore, LFC staff believe it appropriate not to score this against the current CIT estimate.

Section 1 – Destination Sourcing and Professional Services. Section 1 drafts new rules governing the transition to destination sourcing for Gross Receipts and Compensating Tax Act. These impacts will remain highly uncertain – possibly for years. For reference, the tables below show the general fund and local government impact estimates for these changes as estimated in HB6 last year.

CS/House Bill 6/aHFL#1/aSCORC/aSFC/aCC – General Fund Impact (millions $)					
	FY19	**FY20**	**FY21**	**FY22**	**FY23**
Remote sales: direct state impact (at 5.125% - gains beyond existing revenues)		43	44	45	46
Remote sales: state loss from local sharing (static transfer, then loss of 1.225% on most of "e-commerce" base - existing and new)		(24)	(24)	(24)	(24)
Remote sales: state loss from destination sourcing of current GRT out-of-state revenue not from "e-commerce" base				(41)	(42)
Repeal municipal equivalent distribution				5	5

CS/House Bill 6/aHFL#1/aSCORC Local Government Fiscal Impacts (millions $)					
	FY19	**FY20**	**FY21**	**FY22**	**FY23**
Local direct distributions as way of sharing remote sales revenue		24	24		
Local remote sales & destination sourcing gains				75	75
Local comp tax increments				42	42
Repeal municipal equivalent distribution				(5)	(5)
Total Local Government Impacts		**26**	**27**	**124**	**124**

Not included in the charts above is any estimate of swaps and impacts attributed to the "in-person services" rule of Section 1. Section 11 of HB6 (2019) required "professional services" to be reported to the seller's business location and "services, other than those described in Subparagraphs (a) through (c) of this paragraph" to be reported at the location where the service is performed.

In this bill, restricting "professional services" to require an advanced degree or a state license will create a substantial new impact. This will occur by shifting some in-person non-professional services to remainder counties from municipalities, which will increase general fund revenue and decrease municipal revenue. County revenues will be largely unaffected (some gains because of fire protection GRT).

In general, the provisions of this bill create four types of reportable fiscal impacts: (1) general fund impacts of reporting "in-person" services to the location where the services are performed;

(2) local government impacts of reporting "in-person" services to the location where the services are performed; (3) general fund impacts of reporting restricting the definition of "professional services" and increasing impacts of "in-person" services; and (4) local government impacts of reporting restricting the definition of "professional services" and increasing impacts of "in-person" services.

It appears as though none of these four services categories were estimated in the fiscal impact of HB6 (2019). LFC staff is working with the Taxation and Revenue Department to attempt to quantify, in aggregate, the potential impacts of each of these four classes of services.

Section 1 – Transportation Sourcing. An additional impact attributed to section 1 of this bill is changing the transportation sourcing rule from state rate only to the location where the goods or persons enters the vehicle. This would reduce state revenue because goods or services that enter the vehicle within a municipality and have a destination outside the municipality are currently taxed at the state 5.125 percent rate, with no 1.225 percent state share to the municipality or local option municipal rate.

This change in Section 1 would reduce the transportation transaction (enter within the municipality and exit outside) to the net of 5.125 percent minus 1.225 percent, or 3.9 percent, and increase municipal revenue by the sum of local option rates plus the state share 1.225 percent. In the case of Uber/Lyft cross-jurisdictional transactions, there are probably as many in-to-out trips as out-to-in. Thus, generally, the net changes attributed to Section 1 could be a reduction of state general fund revenue and increase in municipal revenue from the in-to-out trips, and no net impact from the out-to-in trips. Review of RP-80 data for the NAICS 48-49 Transportation and Warehousing sector seems to indicate that transportation of persons is already reporting pursuant to the entry-into-the-vehicle rule.

However, Section 1 expands last year's Uber/Lyft changes to all transportation services of persons and property. This may create a fiscal impact on the general fund and municipalities similar to the analysis as described in the previous paragraph for the transportation of property across local jurisdictional boundaries.

Section 3 per SCORC Amendment – reinstates exclusion of FERC regulated independent power producers from single sales factor CIT apportionment. The SCORC amendment reinstated the solar and wind farm exclusion with an applicability date for taxable years beginning January 1, 2024. This causes a small impact for FY25 and a more significant positive impact, estimated in the range of $3 million to $5 million for FY 26 and beyond.

Sections 6 through 10 per SFC amendment – adding SB184 changes to investment Credit Act. The SFC amendments have two impacts:

(A) Allowing the credit rate to equal the state rate plus local option GRT rate or local option compensating tax rate, instead of the state-only GRT/compensating tax rate, which would increase general fund costs as the combined GRT rate is greater than the current-law compensating tax rate; and

(B) (2) Repealing or delaying the significant restrictions and limits in the current-law Investment Credit Act, which would also serve to increase general fund costs and reimbursements to qualifying taxpayers.

Allowing the credit rate to equal the statewide average GRT rate instead of the compensating tax rate would increase general fund costs as the GRT rate is greater than the compensating tax rate. The state would bear the entire cost of this change, with no cost to local governments, despite the local tax rate inclusion in calculating the credit's value. The change is in part related to the new effects of destination based sourcing changes implemented during the 2019 Legislative Session.

To estimate the fiscal impact of the bill, LFC staff used an eight-year average of historical costs as reported in TRD's *Tax Expenditure Reports*. Costs were used to extrapolate investment values in each fiscal year against which the credit is claimed. Using the product of the extrapolated investment value and statewide average GRT rate, marginal costs in using the GRT rate over the compensating rate were calculated. Given the significant fluctuations in the expenditures, the eight-year average of the marginal costs were used. While this results in an average higher than the last three years, the inability to score the impact of delaying the $2 million cap per claimant and delaying the more restrictive employment requirements lends credence to using this slightly higher average.

Sections 11 and 12 per SFC amendment – Local Increments of 1/100 Percent. The provisions allowing local governments to enact GRT rates in increments of .01 percent will increase revenues for most counties and municipalities. This may be small compared to the larger additions of internet sales. The simplification to 1/100 percent could be necessary for software developers to avoid complications with rates that have four or five digits to the right of the decimal. However, 2019's HB-479 consolidated Municipal Gross Receipts, Municipal Environmental GRT, Municipal Infrastructure GRT, Municipal Capital Outlay GRT and the Municipal Hold Harmless GRT with a similar list for counties. Other special rates include "Municipal Quality of Life GRT, Municipal Higher Education GRT, Supplemental GRT, Federal Water GRT," with a similar list for the counties (both county-wide and county area rates). These special rates are generally limited to one or a few jurisdictions, whereas the consolidated rates are available to all jurisdictions. If the bill passes, LFC staff will provide a spreadsheet of potential increases in revenue by jurisdiction attributed to the rounding provision.

Section 14 (as renumbered per SFC amendment). The repeal of the 10 percent credit resale of certain services creates an impact of this bill, but TRD considers this an "arguable" tax expenditure and has not estimated or posted impacts in the 2018 Tax Expenditure Report. Subsequently, TRD has indicated that there have been minimal credit claims and minimal impacts from this repeal.

SIGNIFICANT ISSUES

Section 1 significantly changes reporting location provisions to accommodate the change in last year's HB6 to destination-based sourcing:

- Section 1.B establishes the location for the sale, lease or granting of a license to use real property to be the location of the property (this is new, but sales, leases or granting of a license to use real property may be deductible pursuant to 7-9-53, so this definition may not create a fiscal impact).
- Section 1.C defines a cascade of location determinations that provide clear guidelines to the transition from an origin sourcing principle to a destination sourcing principle. §C establishes the rules for sales of tangible personal property. Note that all transactions will have a New Mexico situs under the destination sourcing principle:

    - If property is received at the business location of the seller, location is that of the seller (conventional retail);
    - If not received at business location of the seller, the location is established by a delivery address of the buyer (applicable to mail order and internet sales from remote locations);
    - If not either of the above, then the address of the purchaser on the ordinary business records of the seller (for example, the address to which an invoice is mailed).
    - If none of the above then use, for example, the address of the bank or debit/credit card company, if local;
    - Finally, if none of the above applies, then the location from which the property was shipped.

  The first three will take care of almost all situations. The fourth and fifth possibilities, however, may not exhaust all possibilities.

- Section 1.D relates to the ***lease*** of tangible personal property, including vehicles, other transportation equipment and other mobile tangible personal property the location of which is the primary use location for the property as indicated by the address of record of the lessee.
- Section 1.E establishes the location of a franchise is where the franchise is used.
- Section 1.F relates to the location of services:
    - For professional services as defined in the bill (which require a state license or an advanced degree), but excepting out-of-state research & development services, the location is where the services are performed or the seller of the product of the services is located (current practice for professional services as defined in the bill).
    - For construction services, the location is the construction site (current practice), although construction-related services as defined in Section 4 (including design, architecture, drafting, surveying, engineering, environmental and structural testing, security, sanitation and services) were added in 2019 HB6 and do not create a new impact for this bill.
    - For real estate brokers and salespersons, the location is that of the real estate (current practice)
    - For transportation of persons or property the location is where the person or property enters the vehicle. (This is new and will generally cause an increase in general fund revenue, a decrease in municipal revenue and small changes in county revenue. These changes may largely be moot per current practice.)
    - For services not enumerated (such as installation of tangible property, trash hauling, repairs of all kinds, etc.) the location becomes the location where the product of the service is delivered. (This is a major change from current practice where the business location – origin – provides the location. In general, the general fund will increase revenue collections and municipalities' revenues will decrease. County revenues will be largely unchanged, except for small increases in Fire Protection GRT.

- Section 1.H conforms the Gross Receipts and Compensating Tax Act to the imposition in 2019's HB6 of a local option compensating tax by requiring the reporting location for compensating tax to use the same location rules as in Section 1, §B through §F.

- Section 1.K (3) and (4) define a "professional service" to require an advanced degree or a state license and changes "in-person services" to the location where the services are performed.

Section 2 provides relief to a taxpayer whom TRD determines by managed audit to owe gross receipts tax. The relief consists of TRD allowing a credit against the GRT of any compensating tax paid relating to the transaction. This credit may be allowed even in the case that a refund of the compensating tax cannot be filed because of the of the ordinary three-year statute of limitations has been exceeded. There may be an extended period of time to resolve issues associated with the major change from origin sourcing to destination sourcing. This provides relief for unintended errors.

Section 3 revises a portion of the UDITPA statute (7-4-10 NMSA 1978) to retain "operating a computer processing facility" in parallel to qualifying manufacturing operations and headquarters in the state that qualify for "sales-only" factor in determining apportioned corporate income tax liability. The section newly adds wind and solar farms that produce wholesale electric power and are regulated by FERC and not by PRC to the other entities that can qualify for "sales only" apportionment factor. This will be a benefit to these renewable wholesale power generators that have at least 80 percent of their total property and payroll within the state, whereby they will qualify for sales-only apportionment factor for corporate income tax liability. This will have an immediate fiscal impact for the existing solar and wind farms, as well as a growing impact as more renewable facilities come on line and transmission lines are built to distribute the generated electricity.

Sections 4 and 5 define and use "construction-related services" to include design, architecture, drafting, surveying, engineering, environmental and structural testing, security, sanitation and similar services. This is of use for section 1 relating to GRT location changes and is used in Section 5 which retains the expansion of the deduction for resale of construction services and construction-related services included in 2019's HB6. Essentially, the definition of construction-related services is moved from 7-9-52 NMSA 1978 to 7-9-3.4 NMSA 1978 and is purely technical and has no fiscal impact.

Section 6, which allows municipal governments to enact rates in increments of one-hundredth percent, will simplify the rate tables which now allow 1/16 percent increments which equates to .0625 percent, whereas 1/100 percent equates to .01 percent. The section also allows a municipality to impose an addition increment so that the result is an even 1/100 percent. For the 1/16 percent example, a municipality could impose an additional .0075 percent to round up to .07 percent. A 1/8 percent increment would be rounded up from .125 percent to .13 percent. Section 6 restricts any rounding to the total limits imposed in last year's HB479. These limits can be found in 7-19D-9 C NMSA 1978. Because of special rate provisions (see list under FISCAL IMPACT, above) that will not be rounded, the resultant local rate might not end up with only two digit percentages.

Section 7 mirrors section 6 and allows county governments to enact rates in increments of one-hundredth percent, providing that the totals do not exceed the limits as established in last year's HB479 and compiled in 7-20E-9 NMSA 1978.

Section 8 is a temporary provision that considers any municipal or county local option enactments of repealed or consolidated rates required by provisions of last year's HB-479 to be

continuous enactments of currently allowed local option enactments. However, if the original enactment was approved by the electorate, then any changes must be taken to the voters. This provision may be related to assuring bond holders that these changes in the titles, uses and amounts of various local option increments will not impair bond repayments.

Section 9 repeals 7-9-57.1 NMSA 1978. "Deduction; gross receipts tax; sales through world wide web sites. Receipts of any person derived from the sale of a service or property made through a world wide web site to a person with a billing address outside New Mexico may be deducted from gross receipts." This is a 1998 law that reversed the conventional New Mexico origin sourcing to conform to federal law protecting vendors in the early days of internet sales. Since HB6, as expanded in this bill, establishes clear sourcing rules based on destination principle, sales executed by an in-state seller to an out-of-state buyer would be deductible pursuant to the sourcing rules and conform to interstate commerce rules.

Section 9 also repeals 7-9-96 NMSA 1978, wherein a taxpayer may claim a credit against gross receipts tax or governmental gross receipts tax due for each reporting period beginning after June 2005 in an amount equal to ten percent of the receipts from selling a service for resale only if:

1. The buyer resells the service in the ordinary course of business;
2. The resale is not subject to the gross receipts tax or the governmental gross receipts tax; and,
3. The buyer delivers to the seller documentation in a form prescribed by the department clarifying that the service is purchased for resale in the ordinary course of business.
4. A credit permitted pursuant to this section does not apply to receipts from selling a service to a governmental entity or to a person who is a prime contractor that operates a facility in New Mexico designated as a national laboratory by an act of congress."

TRD considers this tax expenditure as "arguable," based on its purpose to reduce pyramiding, but does not provide an estimate of the number of claimants or the amount of credits claimed. Since this is a credit, not a deduction, it should be reported separately to the TRD. (pg. 230, 2018 Tax Expenditure Report). Subsequent communication from TRD indicates that this particular credit has been taken by an insignificant number of taxpayers.

PERFORMANCE IMPLICATIONS

In general, the LFC tax policy of accountability is met with the bill's indirect requirement to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking various deductions and other information to determine whether these deductions are meeting their purpose.

ADMINISTRATIVE IMPLICATIONS

This bill, and the underlying changes from HB6 (2019) to TRD processing, has profound administrative implications. The specific changes of this bill will cause minor impacts, but these changes should be considered as TRD accommodates the changes to the basis of gross receipts and compensating tax administration.

Rounding local government rates up to the nearest .01 percent in Sections 6 and 7 could require substantial effort by TRD. However, the requirement to round up to the nearest .01 percent is

statutorily permissive, not mandatory. Fully implementing this change may take a few years or TRD may require the changes to be effective at the statutory July 1, 2021 effective date of the provisions of the bill.

NMML also points out the following:

> "The insertion of a minimum tax rate (0.01 percent) into the municipal and county gross receipts tax acts accomplishes what was a general assumption in the discussions of HB479 last session but not actually written into that bill. The minimum still gives the local governments the flexibility they sought and eliminates the possibility of complicated rates that merchant cash registers (and perhaps the state system) could not accommodate. (Eventually as the remaining local option gross receipts taxes are similarly styled, tax rate tables would be simplified.)"

LFC staff note, however, that simplifying the local rate structure is permissive, not mandatory. The changes to more sensible increments could take some time unless TRD enforces the changes.

TECHNICAL ISSUES

The SJC amendment may have a technical problem with effective dates. Section 5 repeals the definition of "construction-related services" for the purpose of the 7-9-52 NMSA 1978 GRT deduction and moves the definition to Section 4 of the bill, Section 7-9-3.4 NMSA 1978, which is the definition section applicable to the all sections of the Gross Receipts and Compensating Tax Act. However, Section 5 does not have an effective date, so becomes effective 90 days after the legislative session ends, or May 20, 2020. Section 4 has an effective date in the bill of is July 1, 2021. For the period from May 20, 2020 to July 1, 2021, construction-related services may not be eligible for the 7-9-52 NMSA 1978 deduction.

The final SJC amendment labeled 5 allows the various sections amendment in various versions of the bill to be correctly numbered.

NMML points out that there was a technical error in the County Local Option Gross Receipts Tax Act provisions in 2019's HB479 regarding the separation of county-wide and county-area rates into two pots: rates enactable solely by county action from rates which must be ratified by the voters. Because both types of rates are "county gross receipts taxes", a clear separation between county-wide and county-area taxes is required. This has been done in Section 7 of the bill.

Section 8 of the bill is a temporary provision to provide instructions to local governments regarding the transition to the new local option enactments from last year's HB479 (Chapter 274). There is no effective date stated for this section, therefore it is assumed to become effective 90 days after the end of the legislative session, or May 20, 2020. This is not a defect, but a permission for the local governments to engage in the authorized changes to local option enactments in Chapter 274 and the changes authorized in Sections 6 and 7 of this bill.

Section 1 of the bill reads, "Section 7-1-14 NMSA 1978 (being Laws 1969, Chapter 145, Section 1, as amended) is repealed and a new Section 7-1-14 NMSA 1978 is enacted to read:" However, section 11 of 2019's HB6 similarly reads, "Section 7-1-14 NMSA 1978 (being Laws 1969,

Chapter 145, Section 1, as amended) is repealed and a new Section 7-1-14 NMSA 1978 is enacted to read:"

HB6 was passed and signed and became Laws 2019, Chapter 270, Section 11. This bill (Section 10) repeals Laws 2019, Chapter 270, Section 11. Therefore, the header for Section 1 of this bill must and does refer back to the original enactment of the section, as amended.

OTHER SUBSTANTIVE ISSUES

Portions of two detailed fiscal impact tables from HB6 (2019) are included in the *Fiscal Implications* section for reference. Some of the provisions of this bill can be considered as technical corrections to 2019's HB6.

New Mexico Municipal League comments:

> HB326 adds language providing a more just and perhaps speedier resolution to the occasional problem that taxpayer A pays compensating tax with respect to a transaction whereas it is later determined that Taxpayer B should have paid gross receipts tax instead. Now that local compensating taxes will be part of the mix, such issues, though relatively rare, will be more involved. Therefore, a plainer resolution would be useful to the taxpayers and may make the explanations to the local governments involved more comprehensible.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

In general, the changes proposed in this bill are technical. The transition from origin sourcing to destination sourcing enacted in the HB6 (2019) may require future changes. However, the changes sought in this bill should be considered as important interim changes necessary to implement the transition from an origin sourcing principle to a destination sourcing principle.

New Mexico Municipal League submitted the following commentary:

> "Most of these issues have to be dealt with before the provisions enacted by HB6 go live in 2021. That being so, failure to make adjustments foreseeable today will put much more stress on the 2021 session to get right these issues plus any that may be identified between now and that session. It would also double the pressure on TRD to make the requisite IT and administrative changes."

LG/rl/al/sb