

LFC Requester:

Ismael Torres

AGENCY BILL ANALYSIS
2024 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original _____ Amendment _____
Correction _____ Substitute _____ X

Date Prepared: 02/08/2024

Bill No: SB148s

Sponsor: Sen. D. Ivey-Soto; Rep. T. Lane

Agency Name and Code Number: 305 – New Mexico Department of Justice

Short Title: Tax & Fee Admin Fees

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

The Senate Finance Committee substitute for SB 148 would:

- eliminate certain administrative costs and fees withheld by the Taxation and Revenue Department from distributions to: local governments; the Solid Waste Facility Grant Fund; the State Park and Recreation Fund; and the Water Conservation Fund; and
- impose a 3% administrative fee on the distributions to: (1) the special funds of tax increment development districts consisting of revenue from gross receipts tax increments; (2) the Local Economic Development Act Fund, as provided for in Section 7-1-6.67; and (3) metropolitan redevelopment funds consisting of revenue from gross receipts tax increments dedicated to those funds.

Sections 1 and 2 of the bill delete certain statutory text providing that distributions to municipalities and counties of local option gross receipts and compensating taxes may be reduced by the amounts of administrative costs, as authorized by law. Those authorizations were repealed by Laws 2019, Ch. 270, §§ 49 and 52. These deletions therefore have no substantive effect, but rather eliminate extraneous statutory text.

Sections 1 and 2 of the bill also, along with its Sections 4 and 10, gradually eliminate the department’s authorization under Section 7-1-6.41 to withhold administrative fees from municipalities’ and counties’ local option gross receipts and compensating taxes. The current, 3% fee is reduced to 2% from in fiscal year 2027, reduced to 1% in fiscal year 2028, and eliminated beginning in fiscal year 2029.

Sections 3, 8, and 9 collectively eliminate the department’s authorization to withhold administrative fees from certain revenue otherwise deposited into the Solid Waste Facility Grant Fund; the State Park and Recreation Fund; and the Water Conservation Fund. The authorization would cease on the bill’s effective date, July 1, 2025.

Sections 5, 6, and 7 collectively require the Taxation and Revenue Department to withhold an administrative fee of 3% from gross receipts tax distributions to: tax increment development districts; the Local Economic Development Act Fund; and metropolitan

redevelopment project funds. The withholdings would be deposited into the General Fund. These provisions would take effect on the bill's effective date, July 1, 2025.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

The provisions to withhold an administrative fee equal to 3% of the gross receipts tax distributions to tax increment development districts and metropolitan redevelopment projects might conflict with statutes providing that the revenue from those sources is dedicated for the (presumably primary) purpose of securing bonds—i.e., Section 5-15-15 and Section 3-60-33.

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None detected.

TECHNICAL ISSUES

The term “that may be” as used in Section 1 (on page 2, line 8) and Section 2 (on page 3, line 15) is potentially problematic. It is used in the phrase, “the administrative fee that may be withheld . . . pursuant to Section 7-1-6.41 NMSA 1978.” This could be interpreted as merely authorizing—but not requiring—that the fee referred to be withheld. If the intent of this bill is that the fee necessarily be withheld, that intent would be clearer if the term did not appear in those places—that is, if the statutory text read, “the administrative fee withheld . . . pursuant to Section 7-1-6.41 NMSA 1978.”

There is a typo on page 4, line 5: the proposed insertion reads “NMSA 1987,” not “NMSA 1978.”

There appears to be an inadvertent redundancy in the existing statutory text of Section 7-1-6.54 (Section 5 of the bill). Twice it provides that the distribution referred to must be deposited in a special fund of the district. (The phrases “to a special fund of the district” and “to a special fund to the tax increment development district” both appear in the same sentence.) If desired, this bill could correct that apparent error.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

Depending on the intent of the bill, “that may be” should be deleted on page 2, line 8 and on page 3, line 15.

The typo on page 4, line 5 should be corrected to read “NMSA 1978.”

If desired, the redundant text in Section 7-1-6.54 could be eliminated by striking “, to a special fund of the tax increment development district” on page 7, lines 18–19.