

LFC Requester:	
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**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 X **Amendment** _____
Correction _____ **Substitute** _____

Date Prepared: 1/24/2024

Bill No: SB 174

Sponsor: Sen. Leo Jaramillo

Short Title: Calf Canyon Fire Legal Svcs. Gross Receipts

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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

Senate Bill (“SB”) 174 would create a new gross receipts tax (GRT) deduction for the sale of legal services to people eligible to receive compensation from the US government under the Hermit’s Peak/Calf Canyon Fire Assistance Act (the Act) for losses suffered due to the fires.

Section B provides a detailed definition of what is included in “legal services” for purposes of the GRT deduction as well as a list of activities and services not within that definition.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

Many New Mexico victims of the fires have procured legal services to support claims for their losses under the Act due, in part, to the combination of FEMA limiting payments to actual compensatory damages and challenges documenting the value of their losses. Because gross receipts taxes on the sale of legal services (like all gross receipts taxes) are collected by the legal provider but ultimately paid by the person receiving the legal services, this exemption would benefit the victims of the fire rather than the lawyers providing the legal services. In other words, victims could keep more of the fire assistance funds received than they would without this GRT deduction.

However, the word “eligible” could have unintended consequences. The term “eligible” connotes that a person received compensation under the Act; and not merely applied for compensation. Because the GRT deduction applies to legal services rendered to and at the request of a person “eligible” to receive compensation, it is possible that a fire victim could end up paying both attorney fees and GRT on those fees if their claim is denied by FEMA. This situation would arise if the fire victim enters into a contract where they agree to pay the attorney other than on a contingent basis, e.g., hourly or flat fee, and FEMA denies their claim. In that case, the fire victim would still have to pay for the legal services sold to them but the sale would no longer

qualify for the deduction because the person was not considered “eligible to receive compensation.”

Because eligibility for compensation is the touchstone of the deduction, it is unclear whether an attorney who is paid before compensation eligibility is determined can claim the deduction immediately, or would be entitled to claim it when eligibility is determined.

GRT would not be an issue for fire victims whose claims are denied by FEMA but who receive legal services under a contingency fee agreement because, under that type of attorney-client engagement, the attorney cannot collect any fees when they fail to secure a financial recovery and so there would be no “receipts” or “sale of legal services” to tax under GRT.

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

The language used in subsection A could be adjusted slightly to more closely align with the consistent format and language found in the wide variety of other gross receipts tax exemptions and deductions in Chapter 7, Article 9. An example alternative could be:

“Receipts received from the sale of legal services rendered to and at the request of a person eligible to receive compensation pursuant to the Federal Hermit’s Peak/Calf Canyon Fire Assistance Act may be deducted from gross receipts if the legal services are directly related to recovering the compensation.”

As noted above, the bill would benefit from defining “eligible” and address timing issues for claiming the deduction.

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Fire victims will pay state gross receipts taxes on any bills for legal services they receive under the Act.

AMENDMENTS