FISCAL IMPACT REPORT

BILL NUMBER: Senate Bill 92

SHORT TITLE: Construction Materials Gross Receipts

SPONSOR: Padilla/Nava

LAST UPDATE: **ORIGINAL DATE:** 1/26/26 **ANALYST:** Faubion

REVENUE*
(dollars in thousands)

Type	FY26	FY27	FY28	FY29	FY30	Recurring or Nonrecurring	Fund Affected
GRT	$0.0	($6,200.0)	($6,400.0)	($6,600.0)	($6,800.0)	Recurring	General Fund
GRT	$0.0	($4,100.0)	($4,200.0)	($4,400.0)	($4,500.0)	Recurring	Local Governments

Parentheses indicate revenue decreases.
*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
TRD	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files
Housing New Mexico Affordable Housing Act Rules

Agency or Agencies That Were Asked for Analysis but did not Respond
Taxation and Revenue Department
Housing New Mexico
NM Municipal League
NM Counties

LFC has yet to receive analysis from state, education, or judicial agencies. This analysis could be updated if that analysis is received.

SUMMARY

Synopsis of Senate Bill 92

Senate Bill 92 (SB92) creates a new gross receipts tax (GRT) deduction for receipts from the sale of construction materials and labor used in the development of affordable multifamily residential housing projects. The deduction applies to sales made prior to July 1, 2033, and is limited to materials and labor sold to a qualifying grantee under the Affordable Housing Act for use in multifamily housing projects in which the units are affordable to households with incomes at or below 80 percent of area median income, adjusted for family size. The bill defines multifamily residential housing as buildings designed for occupancy by more than three households, including congregate, transitional, or temporary housing for homeless persons, and allows the deduction for projects involving renovation, conversion, demolition, or new construction on donated land. The deduction is required to be reported in the tax expenditure budget, and the provisions take effect July 1, 2026.

FISCAL IMPLICATIONS

The fiscal impact of this bill is difficult to estimate with precision due to limited statewide data on the number and scale of affordable multifamily housing developments that would qualify for the deduction. Eligibility is tied to projects undertaken pursuant to the Affordable Housing Act, for which there is no public, comprehensive, centralized dataset capturing total construction costs, taxable gross receipts associated with materials and labor, or the volume of projects likely to pursue qualifying-grantee status. In addition, uncertainty around future construction activity, input costs, financing conditions, and the extent to which the deduction would spur new development versus subsidize projects that would have occurred absent the incentive further complicates estimation of both state and local revenue impacts.

LFC's fiscal impact estimate is based on an estimated number of affordable housing units approved under the Affordable Housing Act (AHA), estimated construction costs, and the portion of those costs attributable to taxable construction materials and labor. The analysis assumes 670 AHA-approved units annually, consistent with recent activity levels and a small uptick in response to this credit. Average total development cost per unit is assumed to be approximately $317,000 (2024 dollars), based on recent New Mexico multifamily affordable housing cost data, and grown each year by S&Ps construction inflation figure for multiunit residential construction. Consistent with national analyses of affordable housing development, approximately 63 percent of total development costs are assumed to reflect construction materials and labor that would be subject to gross receipts tax. Applying these assumptions results in an estimated $138 million in annual taxable construction receipts. Using a statewide average effective gross receipts tax rate of 6.95 percent for the construction industry as reported in tax data, the associated forgone revenue is estimated at approximately $10.3 million beginning in FY27, which is then allocated 60 percent to the general fund and 40 percent to local governments. Actual fiscal impacts may vary based on project size, geographic location, local tax rates, construction inputs, and the magnitude of induced activity.

The bill does not include an explicit cap on the total amount of gross receipts that may be deducted in any given year. As a result, the fiscal exposure is open-ended and dependent on the volume, scale, and location of qualifying construction activity. If multifamily affordable housing development increases significantly, or if large projects in high-GRT-rate jurisdictions qualify, the reduction in state and local gross receipts tax revenues could exceed initial expectations. The absence of a cap also limits the ability to manage or phase in the fiscal impact over time and increases uncertainty for both the general fund and local governments when forecasting revenues.

This bill creates or expands a tax expenditure with a cost that is difficult to determine but likely significant. LFC has serious concerns about the substantial risk to state revenues from tax expenditures and the increase in revenue volatility from erosion of the revenue base. The committee recommends the bill adhere to the LFC tax expenditure policy principles for vetting, targeting, and reporting or action be postponed until the implications can be more fully studied.

SIGNIFICANT ISSUES

The bill could reduce construction costs for qualifying multifamily affordable housing developments by allowing a gross receipts tax deduction for construction materials and labor, potentially improving project feasibility and leveraging limited public and private housing resources. By tying eligibility to projects undertaken pursuant to the AHA, the bill incorporates certain guardrails, including income targeting at or below 80 percent of area median income and local government involvement, which may help ensure the deduction is directed to projects intended to serve a public housing purpose. Limiting eligibility to AHA-related projects also gives local governments a role in approving projects and implicitly deciding the extent of foregone local gross receipts tax revenue.

The bill incorporates existing AHA requirements, which include affordability-related guardrails. Under the AHA and implementing rules adopted by the New Mexico Mortgage Finance Authority (MFA), qualifying grantees must be approved by a local government and MFA, demonstrate financial and managerial capacity, and enter into enforceable contracts that require housing units to be occupied by low- or moderate-income households. The rules also require project budgets, performance schedules, long-term affordability provisions, and remedies in the event of noncompliance, including the use of restrictive covenants or land use restriction agreements. These provisions are intended to prevent projects from being quickly converted to market-rate housing and to ensure continued public benefit when public resources or concessions are provided.

The AHA framework allows substantial discretion at the local level and by MFA, as the statute and rules do not prescribe uniform affordability terms statewide. Income limits, rent levels, the share of affordable units, and the duration of affordability restrictions are determined through local ordinances and individual project agreements rather than fixed statutory standards. As a result, affordability requirements may vary significantly by jurisdiction and project. Unlike federal programs such as the Low-Income Housing Tax Credit (LIHTC), the AHA does not establish standardized rent caps tied to household income, minimum affordability periods, or uniform recapture mechanisms tied directly to tax benefits. This flexibility may support locally tailored solutions, but it also makes it more difficult to assess the consistency and long-term affordability outcomes of projects receiving the deduction.

There are also policy and administrative considerations related to how the AHA is used in practice. The AHA is primarily designed as an enabling mechanism for local governments to donate land, buildings, infrastructure, or other assistance, rather than as a comprehensive statewide certification of affordable housing. Many affordable housing developments receive federal, state, or local support without invoking the AHA, particularly where no local donation is involved. Tying eligibility for the deduction to AHA qualifying-grantee status may therefore exclude otherwise eligible or worthwhile affordable multifamily projects. This may require further clarification or statutory alignment if the intent is to allow projects to qualify even in the absence of a traditional housing assistance grant. Additionally, because the deduction is tied to the status of a qualifying grantee rather than to a specific approved project, the bill could be interpreted to allow deductions for construction materials and labor associated with other developments undertaken by the same entity. Absent clarification, this structure may broaden eligibility beyond the intended affordable housing projects and complicate administration and enforcement.

There are also administrative and compliance considerations. From a tax administration perspective, the deduction would place new compliance and verification responsibilities on *sellers* of construction materials and labor, who would be required to determine whether each transaction qualifies based on the *buyer's* status as a qualifying grantee and the project's approval under the Affordable Housing Act. Because eligibility depends on local government actions and MFA approval rather than a standardized, statewide certification, sellers may need to collect and retain project-specific documentation for each sale, increasing recordkeeping burdens and the risk of inconsistent application. This structure could also complicate audits for the Taxation and Revenue Department (TRD), which would need to verify not only the nature of the transaction but also the underlying project approvals, affordability agreements, and ongoing compliance with AHA requirements that are administered outside the tax system.

From a policy perspective, the bill may raise questions under a "but-for" test—that is, whether the deduction is necessary for projects to occur. Multifamily affordable housing developments typically involve large capital investments, and while construction materials and labor represent a meaningful cost component, the value of the gross receipts tax deduction may be relatively small compared with total project costs and other subsidies already layered into these developments. In many AHA projects, local governments donate land, buildings, or infrastructure or otherwise convey resources at below-market value, substantially reducing upfront development costs. Because land donation or other local assistance is often a core element of AHA transactions, the deduction may further subsidize projects that are already financially viable due to these existing contributions. As a result, the incentive may primarily reduce costs for developments that would likely proceed absent the deduction, rather than serving as a determining factor in whether a project moves forward.

This bill narrows the gross receipts tax (GRT) base. Many New Mexico tax reform efforts over the last few years have focused on broadening the GRT base and lowering the rates. Narrowing the base leads to continually rising GRT rates, increasing volatility in the state's largest general fund revenue source. Higher rates compound tax pyramiding issues and force consumers and businesses to pay higher taxes on all other purchases without an exemption, deduction, or credit.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is met with the bill's requirement to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose.

ADMINISTRATIVE IMPLICATIONS

Implementation of the bill would require the Taxation and Revenue Department to update tax forms, instructions, publications, and internal systems, as well as develop guidance and audit procedures to verify eligibility for the new deduction.

OTHER SUBSTANTIVE ISSUES

In assessing all tax legislation, LFC staff considers whether the proposal is aligned with committee-adopted tax policy principles. Those five principles:

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

In addition, staff reviews whether the bill meets principles specific to tax expenditures. Those policies and how this bill addresses those issues:

<table>
<tr><th>Tax Expenditure Policy Principle</th><th>Met?</th><th>Comments</th></tr>
<tr><td>Vetted: The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.</td><td>?</td><td>No record of an interim hearing can be found.</td></tr>
<tr><td>Targeted: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals.
Clearly stated purpose
Long-term goals
Measurable targets</td><td>?</td><td>There is no clear purpose statement, stated goals, or targets.</td></tr>
<tr><td>Transparent: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies</td><td>✓</td><td rowspan="2">The deduction is required to be included in the public Tax Expenditure Report.

There is a sunset.</td></tr>
<tr><td>Accountable: The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date.
Public analysis
Expiration date</td><td>✓</td></tr>
<tr><td>Effective: The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions “but for” the existence of the tax expenditure.
Fulfills stated purpose
Passes “but for” test</td><td>?</td><td rowspan="2">There are no stated goals or targets by which to measure effectiveness or efficiency.</td></tr>
<tr><td>Efficient: The tax expenditure is the most cost-effective way to achieve the desired results.</td><td>?</td></tr>
<tr><td colspan="3">Key: ✓ Met × Not Met ? Unclear</td></tr>
</table>

JF/ct/dw/sgs