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FISCAL IMPACT REPORT

ORIGINAL DATE 01/26/10
LAST UPDATED 02/15/10 **HB** _____

SPONSOR Campos, P.

SHORT TITLE State Agency Credit Card Processing Fees **SB** 77/aSCORC/aHTRC

ANALYST Aubel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		(\$.1)*	(\$.1)*	Indeterminate*	Recurring	State agencies: (General fund and special funds) Local Governments

(Parenthesis () Indicate Expenditure Decreases)

*Indeterminate but most likely significant savings would accrue to agencies and local government entities currently offering a “payment by credit card” option and absorbing the credit card fees charged by the credit card companies for these transactions.

Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue*			Recurring or Non-Rec	Fund Affected
FY10	FY11	FY12		
	\$5,000.0	\$5,000.0	Recurring	General fund and all court- related funds

(Parenthesis () Indicate Revenue Decreases)

*For increased collections for courts.

SOURCES OF INFORMATION

LFC Files

Responses Received From (For Senate Bill 77)

Administrative Office of the Courts (AOC)

Regulation and Licensing Department (RLD)

New Mexico Municipal League

Department of Finance and Administration (DFA) (Amendment)

Taxation and Revenue Department (TRD) (Amendment)

Higher Education Department (HED)

Public Education Department (PED)

SUMMARY

Synopsis of HTRC Amendment

The House Taxation and Revenue Committee amendment deletes the Senate Corporations and Transportation Committee amendment that specified a “uniform” convenience fee and now allows a state agency or local governing body to charge a convenience fee to cover the “exact cost” of processing a credit card or electronic transfer transaction.

This amendment addresses the concern that the state agencies and public bodies might continue to subsidize the cost of providing the convenience of using credit and other electronic forms of payment if a uniform fee was charged that was insufficient to cover actual costs. However, it also means a more complex administrative application of charging a fee, which would now vary on actual costs. The actual cost could vary substantially depending on the several factors involved: the transaction amount, total volume of transactions, the credit card company, any flat fee charged by the credit card company and the change in volume over time. This process would also require the agency or public body to know what the fee is at the time of the transaction—it is unclear whether the fee would be known at the “point of sale.” It is also unclear if fees would be negotiated so that all governing bodies are paying the lowest possible—one could be paying more than another. This would lead to higher convenience fees for some segments of the population. One final consideration is the added cost of a system or development of procedures for the state agencies or public bodies to implement a process based on the actual costs, which would most likely be more than applying a uniform fee.

Synopsis of SCORC Amendment

The Senate Corporations and Transportation Committee amendment to Senate Bill 77 places the word “uniform” in front of the word “convenience” so that the implication is that the fees charged will be uniform convenience fees.

TRD specifies that it:

“currently imposes fees on credit card payments by taxpayers as well as for motor vehicle fees. The Department is unable to impose the fees on financial firms that issue the cards because to do so would effectively be an appropriation from the state General Fund and is prohibited by law.

Section 9-11-6.1 NMSA 1978 currently provides the Taxation and Revenue Department with authority to set fees to ‘cover the expenses of providing additional services for the convenience of the public’ after notifying the Legislative Finance Committee.”

PED maintains that the bill would give the agency “flexibility to allow our constituents to pay the way they want... and give PED much greater flexibility in negotiating contracts with dossier evaluation companies.”

DFA notes that “administratively, it would be easier for the government entity to charge a set (uniform) fee than recover the actual cost, which could fluctuate depending on the credit card company. Some other governments are using a uniform fee. For example, the Orange County, Florida, clerk charges \$3.99 per transaction.”

However, RLD notes that, “The state agency and or local governing body may have to absorb part of the cost associated with the use of credit cards and or electronic transfer transactions because not all credit card and electronic transfer fees are uniform.”

Synopsis of Original Bill

Senate Bill 77 amends Section 6-10-1.2 NMSA 1978 that governs general provisions on public money to authorize state agencies and local public bodies to charge a convenience fee for accepting credit card payments.

FISCAL IMPLICATIONS

Credit card companies charge the accepting party a fee, normally from 1.5 percent to 2 percent of the transaction amount, depending on the volume of transactions conducted. The savings accruing to state agencies and local governments is indeterminate because the total cost of paying such fees is unknown. In addition, future savings would depend on transaction amounts and the percentages charged by credit card companies, which may vary from those incurred in the past if the bill resulted in more credit card transactions. However, it appears that the savings could be significant.

Operating Budget Savings

Currently, state agencies (including all branches of state government) and local public bodies must absorb this cost of providing the public with this payment option if offered. The total amount of credit card fees paid is indeterminate, but based on sample agency responses, the bill could represent significant savings to these entities by allowing them to charge a convenience fee to defray the cost. Savings would accrue to all the various funding sources currently used to pay the cost, including general fund.

As an example, AOC notes that the Metropolitan Court in Albuquerque incurred transaction fees of \$53.3 thousand for FY09 and points out that other jurisdictions -- such as Gallup and Santa Fe that offer the credit card option and pay such fees -- would also see savings. In another example, RLD noted that the Social Work Examiners Board paid over \$4 thousand to cover the cost of accepting credit card payments from on-line renewals. RLD states that it has over 200,000 licenses and could benefit significantly if authorized to charge a convenience fee.

A total estimate for savings attributable to state agencies was not provided by DFA.

AOC suggests that “local governments will experience an undetermined financial benefit as well. If more persons are enabled to pay their assessed fines and fees with credit cards, the courts will issue fewer bench warrants for failure to pay. Fewer people will be arrested and placed in detention centers. This would result in lower operating costs for those detention centers.”

Additional Revenue

AOC suggests that the bill would most likely generate additional revenue by allowing more courts to offer the option of credit card payments that cannot afford to do so now, which would result in improved collections as detailed below:

There is not much statistical information on expected improvements in collections that can be traced back solely to newly allowed credit card payments. However, in the local jurisdictions that have reported on statistical improvement, the average increase in revenues appears to be about 25% just by allowing credit card payments. This could produce an additional \$5,000,000 in annual revenues in the magistrate courts alone, as explained below.

As indicated above, the expected increase in collection of judicially imposed fines and fees, a great many of which will be part of traffic violation sentences, will contribute to the general fund and a variety of judicially related special funds. Because Metropolitan Court already utilizes credit card payments, there is likely no expectation for improved collections from that court... On the other hand, magistrate courts will see a substantial increase in revenues. Total cash receipts for all magistrate courts exceeded \$21,000,000 for fiscal year 2009. If we can expect the experience from other parts of the country to be the same here, and the magistrate courts can improve collections by 25%, the increase in revenues should be approximately \$5,000,000 for the general fund and a variety of special funds.

SIGNIFICANT ISSUES

While the following discussion presented by AOC relates to courts, the main points are illustrative of the process and issues relating to offering credit card payments that would logically apply to most public bodies:

As a matter of background, credit card payments to the Judiciary would be for fees related to voluntary civil litigation or imposed as part of the criminal justice system, as well as fines related to criminal punishment. Courts will continue to have the discretion to adjust fines based on the facts before the particular judge at the time. Use of a credit card to make a payment will be a voluntary option among many others. If someone wishes to pay by check, courts will continue to accept that method of payment, as well as payment by cash or money order. Most methods of payment have some potential transactional cost to the user, whether it is an ATM transaction fee, a money order purchase fee, or just the cost of a checking account.

Historically, the credit card companies were hesitant to allow for convenience fees to appear as part of the transaction with government entities. However, the more recent trend is to the contrary. The National Center for State Courts conducted a survey in 2003 that showed 77% of state courts were allowing payment by credit or debit cards. Once credit card payments are authorized, then even greater flexibility is available through payment by telephone, secure websites or in-court electronic kiosks. The Metropolitan Court's experience with credit card transactions is illustrative. The Court processes more than 30,000 credit card transactions annually, accounting for 40% of the Court's financial transactions. This creates about \$3,500,000 in general revenues, plus the contributions to special funds.

While the numbers might be slightly different for district and magistrate courts, the expectation is that credit card payments will become a popular and convenient form of payment statewide very soon if this bill is enacted. About half of the magistrate court defendants request payment by credit card, and it is substantially more convenient for out-of-state traffic defendants to pay by credit card.

RLD maintains that SB77 “would encourage state agencies to offer and expand on-line renewal and would ultimately provide more convenience for customers or consumers. Additionally, financial transactions via credit card and on-line are more accurate and reduce the responsibility of state agencies to directly handle money, checks and money orders. Credit cards are safer and have an immediate receipt for the customer.”

PERFORMANCE IMPLICATIONS

AOC maintains that credit card payments would decrease the need for staff fiscal management time in the local courts, which will allow fiscal specialists to perform other tasks. This could potentially relieve understaffing issues that are the result of budget cuts.

AOC also notes that the courts are participating in performance-based budgeting and suggests this bill may have a positive impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

All entities adopting a convenience fee would have to follow statutory guidelines in developing such fees.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The public will not have the option to pay by credit card in many instances. Entities currently offering payment by credit card would continue to absorb the cost of these transactions. Courts may not derive the benefit of increased collections. Other efficiencies deriving from credit card payments would not materialize.

POSSIBLE QUESTIONS

1. Is the Municipal League in favor of this bill?
2. Are there any consumer groups in favor of this bill?
3. Would the fees be a flat fee or based on the size of the transaction?
4. How would the convenience fees be developed?
5. How would the entities protect the confidential information of credit cards?
6. How much will it cost agencies to set up a credit card payment option?

MA/svb:mt