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FISCAL IMPACT REPORT

ORIGINAL DATE 02/16/11
LAST UPDATED _____ **HB** 343

SPONSOR Lujan, B.

SHORT TITLE Political Subdivision Qualifications to Tax **SB** _____

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	NFI	NFI	Recurring	General Fund
	See narrative *	See narrative *	Recurring	Local Funds

(Parenthesis () Indicate Revenue Decreases)

Duplicates, Relates to, Conflicts with, Companion to SB 483

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.0	\$0.0	\$0.0	Recurring	General Fund (TRD operating)

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 New Mexico Municipal League (NMML)

SUMMARY

Synopsis

House Bill 343 adds a provision to the Tax Administration Act that allows a political subdivision that has properly imposed a tax to continue to impose it (or reimpose the tax if sunsetted) even after the political subdivision no longer meets the statutory criteria that initially qualified it to impose the tax.

FISCAL IMPLICATIONS

NFI for the state. Unlikely that this will affect many local jurisdictions. The principal point is simply to retain gross receipts tax rates through a required reimposition and to forestall taxpayer challenge to rates for which the municipality or county no longer qualifies because of growth.

SIGNIFICANT LEGAL ISSUES

The AGO notes that certain features of the bill are unclear:

The extent of the authorization for a political subdivision to continue to impose a tax is unclear. Subsection (A) states that a political subdivision authorized by virtue of “area, population, net taxable base for rate-setting purposes or other criteria” can continue to impose a tax even after the political subdivision no longer meets the criteria. Subsection (B) is more limited and states that a political subdivision shall not lose its qualifying status to continue a tax based on any change in “county classification, area, population or net taxable base for rate-setting purposes.” This may lead to some disagreement regarding whether a political subdivision’s continued authority to impose a tax depends on its originally meeting only the criteria specified in Subsection (B) or on its original qualification based on any criteria, as indicated in Subsection (A).

SIGNIFICANT ISSUES

A number of municipal and county option gross receipts taxes have qualifications expressed as limits on population, county class and property tax valuations. Three examples follow:

The Municipal Environmental Services Gross Receipts tax (7-19D-10 NMSA) may be imposed generally at 1/16%; and for municipalities with population between 7,500 and 7,800 at the most recent census in a class B county with population less than 25,000, the rate may be .5%. Ruidoso’s 2010 population is estimated at 8,832. Thus, Ruidoso, which adopted the .5% muni env. serv. GRT effective 1/2010 would no longer be eligible to impose the .5% rate when the 2010 census results are published. The bill ensures the municipality (and any bond holders) that receipts from the .5% tax are proof against taxpayer challenge on the grounds that the muni no longer qualifies for the .5% rate.

Pursuant to the municipal higher education facilities gross receipts tax (7-19D-16 NMSA 1978), “eligible municipality” means a municipality that has a population greater than fifty thousand according to the most recent federal decennial census and that is located in a class B county having a net taxable value for rate-setting purposes for the 2006 property tax year or any subsequent year of more than two billion dollars (\$2,000,000,000). Rio Rancho imposed the full .25% allowed effective 7/08. In 2010, however, Sandoval County, with a population in excess of 126,000 was certified as a Class A county. Rio Rancho would no longer qualify to newly impose the higher education facilities GRT. Again the action of the bill would be to sustain the tax against taxpayer challenge.

The Local Hospital Gross Receipts Tax (7-20C-2) contains the most complex qualifications:

A. “county” means:

- (1) a class B county having a population of less than twenty-five thousand according to the most recent federal decennial census and having a net taxable value for rate-setting purposes for the 1990 property tax year or any subsequent year of more than two hundred

- fifty million dollars (\$250,000,000);
- (2) a class B county having a population of less than forty-seven thousand but more than forty-four thousand according to the 1990 federal decennial census and having a net taxable value for rate-setting purposes for the 1992 property tax year of more than three hundred million dollars (\$300,000,000) but less than six hundred million dollars (\$600,000,000);
 - (3) a class B county having a population of less than ten thousand according to the most recent federal decennial census and having a net taxable value for rate-setting purposes for the 1990 property tax year or any subsequent year of more than one hundred million dollars (\$100,000,000);
 - (4) a class B county having a population of less than twenty-five thousand according to the 1990 federal decennial census and having a net taxable value for rate-setting purposes for the 1993 property tax year of more than ninety-one million dollars (\$91,000,000) but less than one hundred twenty-five million dollars (\$125,000,000);
 - (5) a class B county having a population of more than seventeen thousand but less than twenty thousand according to the 1990 federal decennial census and having a net taxable value for rate-setting purposes for the 1993 property tax year of more than one hundred fifty-three million dollars (\$153,000,000) but less than one hundred fifty-six million dollars (\$156,000,000);
 - (6) a class B county having a population of more than fifteen thousand according to the 1990 federal decennial census and having a net taxable value for rate-setting purposes for the 1996 property tax year of more than one hundred fifty million dollars (\$150,000,000) but less than one hundred seventy-five million dollars (\$175,000,000);
 - (7) an H class county;
 - (8) a class A county having a population of less than one hundred fifteen thousand according to the 2000 federal decennial census or any subsequent federal decennial census and having a net taxable value for rate-setting purposes for the 2001 property tax year or any subsequent year of more than three billion dollars (\$3,000,000,000); or
 - (9) a class B county having a population of more than three thousand five hundred but less than ten thousand five hundred according to the 2000 federal decennial census or any subsequent federal decennial census and having a net taxable value for rate-setting purposes for the 2005 property tax year or any subsequent year of more than one hundred million dollars (\$100,000,000) and less than one hundred sixteen million five hundred thousand dollars (\$116,500,000).

While the section allows nine local jurisdictions to impose the Local Hospital Gross Receipts tax, only five have actually done so – Cibola County (6/30/2017), Quay County (6/30/20), Roosevelt County (12/31/2016), San Juan County (12/31/2033) and Union County (12/31/2048). All of these enactments have carried a sunset date as noted. It is likely for all of the nine named counties that in the course of time counties that were originally qualified will grow out the qualification limits. The bill would preserve the rate and prevent taxpayer challenge.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

When counties or municipalities grow out of the range of initial qualification for a particular tax, the bill would forestall any taxpayer challenge. Failure to enact the bill may jeopardize bond covenants.

POSSIBLE QUESTIONS

Are there any municipalities or counties for which this bill is an immediate issue, or is the bill prophylactic?

LG/mew

The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:

1. **Adequacy:** revenue should be adequate to fund government services.
2. **Efficiency:** tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.
3. **Equity:** taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.
4. **Simplicity:** taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.
5. **Accountability/Transparency:** Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.

More information about the LFC tax policy principles will soon be available on the LFC website at www.nmlegis.gov/lcs/lfc

ENACTMENT DATES OF LOCAL OPTION TAXES -- as of January 1, 2011

11/15/10

ABBREVIATIONS OTHER SPECIAL TAX RATES

GRT - Gross Receipts Tax

County Hosp. GRT - Special County Hospital Gross Receipts Tax

Cnty. Hosp. Emerg. - County Hospital Emergency Gross Receipts Tax

Jail - County Correctional Facility Gross Receipts Tax

Cnty. Env. GRT - County Environmental Services Gross Receipts Tax

Cnty. Educ. GRT - County Education Gross Receipts Tax

Fire - County Fire Protection Excise Tax

County Reg. Trans. GRT - County Regional Transit Gross Receipts Tax

County Water & Sanit. GRT - County Water & Sanitation Gross Receipts Tax

Municipal Env. Svcs. GRT - Municipal Environmental Gross Receipts Tax

County Business Ret. GRT - County Business Retention Gross Receipts Tax

ORDINANCE EXPIRATION DATES

COUNTY HOSPITAL EMERGENCY GRT

Sierra

6/30/2017

COUNTY WATER AND SANITATION GROSS RECEIPTS TAX

Valley Water & Sanitation District (San Juan) 12/31/2013

El Prado Water & Sanitation District (Taos) 12/31/2013

El Valle de Los Ranchos Water & Sanitation District (Taos) 12/31/2013

COUNTY CORRECTIONAL FACILITY GROSS RECEIPTS TAX

Chaves County 7/1/2011

COUNTY REGIONAL TRANSIT GRT

Los Alamos 12/31/2023
Rio Arriba 12/31/2023
Santa Fe 12/31/2023
Taos 12/31/2023

COUNTY BUSINESS RETENTION GROSS RECEIPTS TAX

Lincoln County 12/31/2015

COUNTY EMERGENCY COMMUNICATIONS AND EMERGENCY MEDICAL SERVICES TAX*

Grant 12/31/2012
San Juan 6/30/2013
Sandoval 6/30/2014

MUNICIPAL GROSS RECEIPTS TAX

Albuquerque (3rd & 4th) 6/30/2019

COUNTY LOCAL HOSPITAL GRT

Cibola 6/30/2017
Roosevelt 6/30/2020
San Juan 12/31/2016
Union 12/31/2033
Quay 12/31/2048

MUNICIPAL INFRASTRUCTURE GROSS RECEIPTS TAX

Alamogordo (3rd & 4th) 12/31/2015
Carlsbad (3rd & 4th) 12/31/2013
Silver City (3rd & 4th) 6/30/2014

SPECIAL COUNTY HOSPITAL GROSS RECEIPTS TAX

Quay 12/31/2013

COUNTY EDUCATION GROSS RECEIPTS TAX

Taos 6/30/2012

MUNICIPAL HIGHER GROSS RECEIPTS TAX

Rio Rancho (1st through 4th) 6/30/2028

*Effective July 1, 2004, SB-88 (2004 Legislative Session) repealed the mandatory expiration of ordinances adopting the County Fire Protection Excise Tax, County Correctional Facility Gross Receipts Tax and the County Emergency Communications and Emergency Medical Services Tax. Ordinances that were adopted prior to this legislation included the mandatory repeal language. As a result of this change ordinances adopted before

implementation of SB-88 will need to be amended or replaced to remove the mandatory repeal language that currently exists. Once these amendments occur, the above listing will be adjusted accordingly.