F I S C A L   I M P A C T   R E P O R T

ORIGINAL DATE 1/25/18
SPONSOR Cisneros **LAST UPDATED** **HB**

SHORT TITLE Tax Code Cleanup & Reporting **SB** 68

ANALYST Clark

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY18	**FY19**	**FY20**	**FY21**	**FY22**		
None	Minimal but Likely Positive; Helps Preserve Existing Revenues				Recurring	General Fund, Local Governments

Parenthesis ( ) indicate revenue decreases

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal	Minimal	Minimal	Recurring	TRD Operating Budget

Parenthesis ( ) indicate expenditure decreases

Conflicts (regarding insurance "in lieu of" language) with SB162
Duplicates SB128 (endorsed by LFC)

SOURCES OF INFORMATION
LFC Files

Responses NOT Received From
Taxation and Revenue Department (TRD)

Responses Received From
New Mexico Municipal League (NMML)
Office of Superintendent of Insurance (OSI – received analysis on SB128)
Economic Development Department (EDD – received analysis on SB128)

SUMMARY

Synopsis of Bill

Senate Bill 68 performs various tax code cleanup and reporting functions. It removes a potential loophole that would prevent taxation of the prime contractor of a national laboratory, such as Los Alamos National Laboratory (LANL), if the contract is awarded to a nonprofit instead of the current for-profit contractors. It removes another potential loophole in the insurance "in lieu of" provision, where the possibility exists for taxpayers in the future to merge with an insurance company or begin selling insurance policies to avoid nearly all other taxes, including gross receipts tax (GRT).

The bill requires separate reporting for many deductions (many other deductions already require this) and additional reporting for certain economic development tax incentives (some others already require this). The bill also requires the Taxation and Revenue Department (TRD) to provide LFC and Department of Finance and Administration (DFA) economists with access to taxpayer-level data for analysis. This would in no way permit the public release (or release to legislators, executive branch officials, or any other individuals) of taxpayer data. Any analysis released would need to be aggregated to a level where a taxpayer's information could not be discerned. This level of access could significantly improve the ability of the economists to develop accurate revenue forecasts and fiscal impact reports.

Finally, the bill repeals a variety of tax expenditures that are expired, unused, or have unknown costs where it appears the original intent may no longer exist.

The effective date of this bill is July 1, 2018.

FISCAL IMPLICATIONS

While the bill would likely generate minimal revenue gains compared with the forecast, it has the potential to protect existing state revenues. For example, it provides a mechanism to protect the majority of the current revenue stream from national laboratories should the management contract be issued to a nonprofit organization. The estimate for the possible loss of state GRT revenues if the contract for LANL is issued to a nonprofit contractor is roughly $25 million to $30 million. The new contract would become effective after September 2018, potentially impacting revenues for most of FY18 and subsequent fiscal years. The Sandia contract was reissued in December 2016 to another for-profit entity and will not be reissued within the forecast period.

The projected potential loss for the LANL contract was estimated by LFC staff based on documents provided by the national lab contractors, including historical GRT payments. However, the documentation is somewhat limited in detail, and the $25 million to $30 million estimate is a ballpark number. The local government would also see a significant loss of GRT revenues if the contract were awarded to a nonprofit under current statute.

This bill would not allow the state to continue receiving corporate income tax (CIT) payments from a nonprofit prime contractor but would substantially reduce the possible overall fiscal impact by maintaining current GRT revenues.

As another example, amending the insurance "in lieu of" provision and the GRT exemption could potentially save tens or hundreds of millions of dollars if taxpayers attempt to exploit the existing tax code in the future. Most of the other provisions would generate either no revenue impact or likely minimal revenue gains.

Estimating the cost of tax expenditures is difficult. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for a tax expenditure may be ambiguous, further complicating the initial cost estimate of the expenditure's fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures.

SIGNIFICANT ISSUES

The New Mexico Municipal League (NMML) supports this legislation, especially the section dealing with the taxability of a prime contractor at a national laboratory located in the state. NMML also believes that by collecting and reporting certain deductions estimates of the impact of potential tax reform will be more precise.

Separate reporting for many deductions has potential to improve revenue tracking and forecasting and significantly improve the ability to score future tax reform proposals. Additional reporting for certain economic development tax incentives would provide improved data toward the goal of allowing quality cost-benefit analyses of tax incentives.

Access for DFA and LFC economists to taxpayer-level data could significantly improve the ability of the economists to develop accurate revenue forecasts and fiscal impact reports. As noted in the bill summary, this would in no way permit the public release (or release to legislators, executive branch officials, or any other individuals) of taxpayer data. Any analysis released would need to be aggregated to a level where a taxpayer's information could not be discerned. As part of the process to ensure the confidentiality of this data, the economists would need to attend confidentiality training by TRD, similar to the training provided by the agency to local government officials who are able to access certain taxpayer-level information. Currently, local government officials have access to a much greater level of detailed tax data than DFA and LFC economists, and this lack of access at the state level impairs the ability of the agencies to develop high quality analysis.

Many deductions do not require separate reporting by taxpayers and are lumped together in a single dollar amount on the forms submitted to TRD. Combined reporting of deductions leads to either nonexistent or imprecise cost estimates and complicates any possible cost-benefit analyses. Separate reporting of these costs would solve half the problem of performing such analyses. Additionally, separate reporting of deductions intended to reduce or eliminate certain forms of tax pyramiding and other potentially large deductions could significantly improve analysis of tax reform proposals.

It is difficult or impossible to perform cost-benefit or return on investment analyses for many of the state's tax incentives. Separate reporting of deductions to TRD would help, but additional, detailed reporting would substantially improve public accountability, transparency, and the ability for any interested parties to analyze tax incentives. Companies are not required to take these incentives – it is a choice – and therefore, companies would consider any additional reporting when choosing to take advantage of a tax incentive. This bill would require businesses taking advantage of certain incentives to permit TRD to publicly report the taxable base and foregone revenues by incentive (and by taxpayer in certain cases to improve the ability to perform analyses). It is important to note that access to detailed data on jobs created and investments by the taxpayers would be needed for more thorough analysis – this bill does not address that issue, but it should be discussed for future consideration.

PERFORMANCE IMPLICATIONS

This bill has potential to significantly improve revenue tracking and forecasting and analysis for fiscal impact reports.

ADMINISTRATIVE IMPLICATIONS

TRD will likely report there will be a minimal, nonrecurring impact to make changes to GenTax and reporting forms and a very minimal, recurring impact due to the additional annual reporting requirements.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates SB128 and slightly conflicts (regarding insurance "in lieu of" language) with SB162.

TECHNICAL ISSUES

OSI provided the following technical issue that should be addressed in clarifying language in the bill:

> Section 3 B proposes to exempt gross receipts tax for a service that is also not subject to premium tax. Does the legislation intend to exempt premiums collected by the agent on behalf of the insurer? Those premiums would be subject to premium tax and should not be subject to gross receipts taxes. Compensation for services provided by an agent should be subject to GRT.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If this bill is not enacted and the LANL contract is issued to a nonprofit entity, the state and local governments would each lose tens of millions of dollars.

Does the bill meet the Legislative Finance Committee tax policy principles?

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

Does the bill meet the Legislative Finance Committee tax expenditure policy principles?

1. **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.
2. **Targeted**: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals.
3. **Transparent**: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies.
4. **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.
5. **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.
6. **Efficient:** The tax expenditure is the most cost-effective way to achieve the desired results.

JC/al

Appendix 1

Separately Reported Deductions

7-9-47	Sale of tangible personal property for resale
7-9-48	Sale of a service for resale
7-9-54.3	Wind and solar generation equipment sales to governments
7-9-56.2	Hosting world wide websites
7-9-57	Sale of services to an out-of-state buyer
7-9-57.2	Sale of software development services
7-9-63	Publication sales
7-9-64	Newspaper sales
7-9-69	Administrative and accounting services
7-9-73.1	Hospitals
7-9-73.2	Prescription drugs
7-9-75	Sale of services performed on product manufactured
7-9-83	Jet fuel (GRT)
7-9-84	Jet fuel (comp)
7-9-86	Sales to film production companies
7-9-108	Management or investment advisory services for mutual funds, hedge funds, or REITs

Tax Incentive Amount and Identity Reporting

7-2E-1.1	Rural job tax credit
7-9-56.3	Trade-support company in a border zone
7-9-62.1	Aircraft sales and services
7-9-73.1	Hospitals
7-9A-9	Investment credit
7-9F-10	Technology jobs and R&D credit
7-9G-1	High-wage jobs credit
7-9J-8	Alternative energy product manufacturers credit

Repeals

7-2-18.4	Business facility rehabilitation credit (PIT)
7-2-18.5	Welfare-to-work credit
7-2-18.8	Certain electronic equipment credit
7-2-18.21	Blended biodiesel fuel credit (PIT)
7-2-18.27	Physician participation in cancer treatment credit
7-2A-15	Business facility rehabilitation credit (CIT)
7-2A-23	Blended biodiesel fuel credit (CIT)
7-2D-1 thru 7-2D-14	Venture capital investments credit
7-9-65	Chemicals and reagents
7-9-94	Military transformational acquisition programs
7-9-106	Military construction services