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

SPONSOR Wirth **ORIGINAL DATE** 1/21/19
LAST UPDATED 2/27/19 **HB**

SHORT TITLE Occupancy Tax for Affordable Housing **SB** 7/SPACS/SCORCS

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
	See Fiscal Implications	See Fiscal Implications	Recurring	Local Governments

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received on SPAC Sub From
Mortgage Finance Authority (MFA)
Department of Finance and Administration (DFA)
Tourism Department (NMTD)

Reponses Received on Original Bill From
New Mexico Counties (NMCs) (Formerly New Mexico Association of Counties)

No Responses Received
New Mexico Municipal League (NMML)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

The Senate Corporation and Transportation Committee Substitute for Senate Public Affairs Committee Substitute for Senate Bill 7 adds an occupancy surtax to a portion of the lodger's tax authorized by 3-38-15 NMSA 1978. The occupancy surtax is up to 2 ½ percent of the gross taxable rent of single-family residential rentals. "Single-Family residence" in this SCORC substitute is somewhat broader than the very narrow definition in the SPAC substitute. In this SCORC substitute, a single family residence is defined as

> "…an occupied residence, including an apartment, house, guest house, cottage or condominium, in which at least one room or unit is rented by an operator through the use of advance reservations. 'Single-family residence" does not include a hotel, motel, lodging house, bed and breakfast establishment or property offered as a time-share…"

Probably the most significant change is to exclude time-shares and bed and breakfast establishments from this occupancy surtax.

The bill conforms to the changes in this session's SB106, which has been signed into law as Laws 2019, Chapter 25. This conformity expands the scope of both the lodger's tax of 3-38-15 NMSA 1978 and the proposed occupancy surtax of 3-38-15.1 NMSA 1978. The proceeds of the new surtax must be used by the municipality or county to defray some of the costs of providing affordable housing in the jurisdiction. "Affordable housing" is defined as housing that benefits those whose income is at or below 80 percent of the jurisdictions median income.

The effective date of the bill is July 1, 2019.

FISCAL IMPLICATIONS

The proposed bill does not have a financial impact on the state general fund. The bill may provide a new source of funds for affordable housing that MFA can leverage with its existing funding and programs. There will certainly be a positive fiscal impact for those local entities imposing the occupancy surtax on short-term (less than 30 days) single-family rentals. Use of the tax is permitted by the Affordable Housing Act (Section 6-27-1 NMSA 1978), an exception to the state's antidonation clause (N.M. Constitution, Article IV, Section 31) that allows state and local governments to contribute public funds, buildings, or other resources to create or preserve affordable housing.

The fiscal impact of this bill for the counties and municipalities is difficult to determine, because the occupancy surtax is only imposed on short-term single-family residences, where advance reservations are require. This is apparently an attempt to narrowly tax Airbnb® and similar Internet reservation sites. The companion lodger's tax is imposed primarily on hotels and motels. SB106 would add the imposition to smaller rentals, such as those booked on Airbnb and similar Internet reservation sites. Because the proposed occupancy surtax in this bill would only be imposed on short-term single family residential rentals, it is unlikely to generate significant money for affordable housing, except, perhaps in Santa Fe and Albuquerque.

New Mexico Counties reports, "Senate Bill 7 will give counties another tool to enhance opportunities for providing affordable housing in their communities."

The New Mexico Tourism Department reports, "The department has a competitive Cooperative Marketing Program in which the department partners with local municipalities and counties leveraging lodgers' tax in a 1:1 match to promote local destinations." However, this bill does not reduce the lodgers tax currently collected or the enhanced revenue attributable to SB106/ Laws 2019, Chapter 25 (SB106). MFA reports the bill does not conflict with the local government's use of the tax for tourism-related uses already allowed under the law.

SIGNIFICANT ISSUES

The Original Senate Bill 7 defines "affordable housing" as any housing development built to benefit those whose income is at or below 80 percent of the area median income. The substitute bill deleted a companion restriction that beneficiaries of affordable housing funding should pay no more than 30 percent of their gross monthly income toward such housing. Restoring this idea would give municipalities a target for selecting both the individuals that would benefit and the amount of benefit. "Short-term occupancy rental" is defined as lodgings offered for rent for less than 30 days per transaction. The definition of affordable housing in the substitute is consistent with accepted definitions of affordable housing from the U.S. Department of Housing and Urban Development, MFA, and the Affordable Housing Act.

In 2004, the Legislature created the Affordable Housing Act to allow local governments to donate resources to create and maintain affordable housing in their communities. MFA was given oversight over the implementation of the act, which requires that communities receiving affordable housing donations create an affordable housing plan. To date, MFA has assisted in the creation of 33 affordable housing plans in communities across the state and has helped to implement those plans, in accordance with the act.

Affordable housing and low-income rentals have received large investments through MFA. Currently, Santa Fe, Taos, Los Alamos, Carlsbad, Placitas (near Hatch), and Albuquerque are developing affordable apartments with MFA products.

Housing projects eligible for tribal infrastructure funds have been leveraged with MFA products. MFA continues to work with the New Mexico Finance Authority and the Colonias Board on housing projects within the colonias.

Workforce housing is scarce in the areas of the state experiencing an economic boom. MFA is limited in its ability to address workforce housing issues inasmuch as it's programs are specific to low- and moderate-income persons.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 106, which passed and has become Laws 2019, Chapter 25) removes an exemption from the local-option occupancy tax (3-38-13 et seq. NMSA 1978) for short-term rentals (less than 30 days) by a vendor that does not offer at least three rooms within or attached to a taxable premises for lodging or at least three other premises for lodging or a combination of these within the taxing jurisdiction. The intent of Chapter 25 is to remove an unanticipated tax exemption for homeowners who rent rooms through third-party websites and applications, as well as to level the playing field between designated and compliant accommodations and somewhat less compliant accommodations. The Substitute for House Bill 7 has been carefully drafted to accommodate the changes incorporated in Chapter 25.

OTHER SUBSTANTIVE ISSUES

New Mexico's housing needs are unique. The MFA reports the Albuquerque metro area is the closest to a functional housing market; its growing population and stable economy attract developers who offer a diversity of housing and price needs. Housing in rural areas of New Mexico significantly differs. Due to low and negative growth rates in most counties, cities struggle to attract new development and investment.

Many communities in the United Stated suffer from high housing costs that make it difficult for low and moderate-income households to afford to purchase or rent a home. Low and moderate-income households are often pushed to live in certain neighborhoods or outlying areas where housing costs are lower. The households affected include critical workforce, including service workers, teachers, healthcare workers, and public safety workers.

Factors that contribute to this phenomenon include high-paying industries like technology and extraction that drive housing costs higher than employees of other industries can afford. Another factor is second homes, vacation homes and, more recently, short-term rentals, which take homes and apartments out of the traditional housing market and charge more for them than the local population can afford. As housing costs rise, so do the costs of raw land and development, which exacerbates the situation by making it overly expensive to develop new, affordable housing. Many cities have imposed occupancy taxes and other regulations on short-term rentals in order to limit their number and their impact on local housing markets. In New Mexico, Santa Fe, Taos and Ruidoso have especially high rates of second homes, vacation homes and short-term rentals which drive up housing, land and development costs and make it difficult for low and moderate income households to obtain affordable housing.

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