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

ORIGINAL DATE 1/25/16
SPONSOR Garcia, MP **LAST UPDATED** 2/3/16 **HB** 53/aHAFC

SHORT TITLE Certain Taxes for Low-Income Home Assistance **SB**

ANALYST Graeser

APPROPRIATION (dollars in thousands)

Appropriation					Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18	FY19	FY20		
$0.0	$0.0	$5,890	$6,150	$5,660	Contingent Recurring	HSD/LIHEAP
$0.0	$0.0	$1,470	$1,540	$1,420	Contingent Recurring	MFA/Weatherization

Parenthesis ( ) indicate expenditure decreases

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18	FY19	FY20		
	($0.0)	-$7,370	-$7,690	-$7,080	General Fund	General Fund
	$0.0	$5,890	$6,150	$5,660	HSD/LIHEAP	Low-Income Home Energy Assistance Fund
	$0.0	$1,470	$1,540	$1,420	MFA/Weatherization	MFA/Weatherization

(Parenthesis ( ) indicate revenue decreases

These estimates are congruent with the January revision to the revenue estimates developed by the Consensus Revenue Estimate Group.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		**	**	**		MFA/Weatherization

Parenthesis ( ) indicate expenditure decreases

** The bill allows MFA to expend up to 5% of the amount of transfer for administration. MFA indicates that this 5% allowance will be sufficient. Although TRD and DFA/FCD have administrative duties pursuant to the provisions of this bill, there should not be any additional operating budget impacts. There are no accountability or separate reporting requirements for this bill.

SOURCES OF INFORMATION

LFC Files
HIS/Global Insight CPI forecasts for January 2016
January 2016 Revenue Estimate by the Consensus Revenue Estimating Group

Responses Received From
Human Services Department (HSD)
Mortgage Finance Authority (MFA) – on last year's HB 572
Energy, Minerals, Natural Resources Department (EMNRD) – on last year's HB 572
Department of Finance and Administration (DFA)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill as amended

The House Appropriation and Finance Committee amendment to House Bill 53 change the base year from FY 2013 in the original to FY 2016. Additionally, the effective date of the bill was moved from July 1, 2016 to July 1, 2017.

These changes are appropriate to recognize the change in need and resources in the wake of the recent collapse in oil and natural gas prices reflected in the January 2016 revenue estimate revisions published by the Consensus revenue estimating group.

Synopsis of Original Bill

House Bill 53 proposes a recurring, but contingent, source of **earmarked** revenue for the Low Income Home Energy Assistance Program (LIHEAP). The bill proposes a formulaic amount of revenue from the Emergency School Tax with 80 percent transferred to Human Services for the direct LIHEAP assistance to low-income individuals for home heating and 20 percent transferred to Department of Finance and Administration for the LIHEAP home weatherization program managed by New Mexico Mortgage Finance Authority. The formula establishes a "base amount" which is the amount collected in a particular month of FY13 adjusted by the percentage increase in the Consumer Price Index for energy, all US urban consumers (CPI-U/Energy). Specifically, the numerator is the CPI (energy) for the calculation month of the current year and the denominator is the CPI for the corresponding month of FY13. Money would only be transferred when the calculation month's actual emergency school tax collections exceeded the indexed base amount. The distribution to the newly created low-income home energy assistance fund would be calculated as 20 percent of the difference between actual collection for the month and the base amount. 80 percent of the amount in the low-income home energy assistance fund would be appropriated to Human Services Department (HSD) for the LIHEAP program and 20 percent would be used by the New Mexico Mortgage Finance Authority for weatherization of homes occupied by LIHEAP eligible individuals.

The effective date of the act is July 1, 2016. The bill provides instructions on timing of the provisions of the bill. There is no sunset date.

FISCAL IMPLICATIONS

The revenue estimate assumes the Emergency School Tax future estimate in the January 2016 Consensus Revenue Estimating Group would be received normally in all months of the fiscal year. Because of the effective date, there would be no transfer in either FY 2016 or FY 2017. The FY 2016 base month receipts were corrected for advanced payments.

LFC staff have built a spreadsheet model including all of the provisions of this bill. CPI-U energy indices have been downloaded and the forecasted values obtained from the IHS/Global Insight January 2016 Forecast. The monthly base amounts were obtained from ONGARD distribution month database. The totals of these two items were confirmed against the audit-adjusted General Fund report provided by the Financial Control Division of DFA. Only the ONGARD distribution month data were used in calculating the effect of the provisions of the bill.

The monthly future amounts of the Emergency School Tax collections were modeled directly from the January revised Consensus Revenue Estimate.

This spreadsheet is available by request from the LFC.

In last year's Agency bill analysis of HB 572, MFA notes that MFA will expend the funds by including them in its existing residential energy conservation program, NM Energy$mart, to weatherize homes for low-income households. Based on current and prior years of administering the NM Energy$mart program, there should be no additional operating budget impact on MFA that is not covered by the appropriation in HB 572. The bill explicitly provides for 5 percent administrative fees to be retained by MFA.

This bill does not create a tax expenditure, since taxes do not change pursuant to the provisions of this bill. However, the bill does create an earmarked fund that reduces revenues to the general fund. This feature may be counter to the LFC tax policy principles of adequacy, efficiency, accountability and equity. Due to the increasing cost of tax expenditures and earmarks, revenues may be insufficient to cover growing recurring appropriations.

SIGNIFICANT ISSUES

This same concept was introduced as HB 280 in 2012, HB 331 in 2013, HB 104 in 2014 and HB 572 in 2015. This bill, however, apparently addresses several of the criticisms of the previous bills.

These previous bills were criticized on at least two design points:

- The amounts of funds in the LIHEAP fund could not be budget adjusted to allow expenditure until September or October of the fiscal year following the tax collection. Emergency School Tax collections are somewhat volatile and the revenues cannot be estimated with any certainty until they are "in the bank."
- By using the CPI-U, all items, there is only a rough correspondence between need and resource.
- Using both the CPI-U and the CPI-energy rendered the bill's equity hard to understand.

This bill addresses these criticisms and addresses other technical issues.

- This bill changes the distribution from essentially a fiscal year calculation to a monthly calculation. By the effective date of the bill, the FY 2016 base month amount of emergency school tax (net of any advanced payments) will be known. The FY 2016 base CPI-U, energy amounts will also be known. The calculation month CPI-U/ energy index is published well before the tax returns for the product sales month are required to be filed. Therefore, Taxation and Revenue Department (TRD) should be able to calculate the amount of each month's transfer to the LIHEAP fund and the residual amount, plus any advanced payments to the General Fund. Since it is a monthly calculation, it can be automated and a low error rate encountered. TRD will have to change its spreadsheets to exclude the advanced payments prior to calculating any distribution to the low income home energy assistance fund.
- When there is a large increase or decrease in crude oil and natural gas prices, the CPI-U/Energy increases or decreases commensurately and both the need for home heating assistance and the resources increase or decrease together. High crude oil and natural gas prices drive the CPI-U/energy index up, but the high prices result in higher amounts of emergency school tax collections.
- Need is best measured by a combination of the CPI-U, all items **and** the CPI-U, energy index. The weatherization program has a relatively long lead time. The time to weatherize is before the cold weather hits. Weatherization projects have a very high return in energy (and energy cost) savings per dollar of program expenditures.
- However, using a combination of both the CPI-U and the CPI/energy makes the equity of the bill hard to understand. This bill uses only the CPI/energy index.
- The bill also addresses a subtlety, which is that the oil and gas advanced payments for Emergency School Tax are not General Fund revenues. They are transferred to DFA by TRD each month, but the advanced payments are excluded at audit as "Due to Taxpayers." The provision in this bill for TRD to exclude advanced payments from the monthly calculation improves the accuracy of the match between need and resource. It will also smooth out the monthly variation in calculated transfer amounts.

While solving a number of previous criticisms, it possibly adds a new criticism. There is no "catch-up" feature. Calculating this transfer as the sum of 12 independent monthly calculations will always result in more money transferred to the LIHEAP fund than if the calculation were made at the end of the fiscal year.

HSD criticizes the concept of funding a recurring need from a highly volatile revenue source rather than building appropriations to the two programs into the General Appropriations Act process:

> "This bill would earmark a volatile revenue source to fund recurring needs. It is unclear why LIHEAP and MFA's home repair weatherization program should be funded through the proposed earmark rather than through annual appropriations, as are the vast majority of recurring state programs."
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> "This bill appears to be designed to earmark specific energy related funds for low-income home energy assistance. This bill would ensure funding flow to home energy assistance during positive energy revenue cycles, but based on the calculation methodology, would not provide funding or would provide reduced funding during times of low energy pro-

> duction and/or energy costs."

MFA notes that this bill provides additional funding to the NM Energy$mart program to complete whole-house weatherization for low-income households throughout New Mexico, resulting in job creation and significant cost and energy savings for low-income households. Many low-income families live in homes with inadequate heat, leaky or missing windows and unsafe living conditions. As a result, low-income households may spend up to 17 percent of their monthly budgets on utility costs compared to four percent for homeowners with higher incomes. Weatherization through the NM Energy$mart program has resulted in savings up to $400 per year in the energy bills of low-income households. DOE research shows that for every one dollar invested in weatherization, the community receives $2.51 in additional benefits.

FY15 actual expenditures for LIHEAP are $13,275.6 million; the FY16 operating budget is $13,675 million; and the FY17 request is for $16,975 million.

Human Services Department (HSD) notes the following:

> HSD administers the federally funded Low-Income Home Energy Assistance Program (LIHEAP) which helps low income New Mexicans pay for home heating and cooling costs one time each program year. LIHEAP funds are also used for the weatherization program which provides weatherization services/energy related home repairs for eligible low income households. HSD also administers the weatherization program. HSD receives funding from a federal LIHEAP grant. HSD received $16,941,365 for FFY15. In FFY15, HSD assisted 61,486 individuals with an average benefit amount of $189 per household. Thus, if funds are appropriated the department would need to establish and maintain a mechanism to distinguish the use, eligibility and fund expenditure monitoring between the federally funded LIHEAP and funds associated with this request.

PERFORMANCE IMPLICATIONS

MFA on 2015's HB 572 provided the following commentary:

> "MFA administers the NM Energy$mart program using a combination of DOE weatherization and LIHEAP funds, with some additional funding from local utilities and other sources. From 2005-2009, the state appropriated funds on an annual basis for NM Energy$mart. MFA did not request state appropriations in 2010 or 2011 because it received substantial funding for NM Energy$mart from the American Recovery and Reinvestment Act (ARRA) during that period. ARRA funds have been fully and successfully expended. However, the state has not reinstated funds for NM Energy$mart to date."

> "Reinstating state appropriations for NM Energy$mart is more important than ever because of expected federal budget cuts and urgent unmet need. The program is especially important for seniors living on fixed incomes, low income families with children, and rural areas of the state where housing stock tends to be older and in greater need of weatherization."

> " … Costs for whole-house weatherization average $5,000 per home. "

ADMINISTRATIVE IMPLICATIONS

TRD reports a moderate ITD impact (less than 500 hours); implementation requires changes to distribution. In addition, TRD reports that this bill has moderate impact on financial distribution business processes. Section 2, page 2, starting on line 23, authorizes the distribution of extraction taxes to the Low Income Home Energy Assistance Fund. Within the state's central accounting system (SHARE) a new account would need to be created by Financial Distributions Bureau (FDB) staff to record the distribution. The Human Services Department and Department of Finance and Administration (DFA) would need to provide FDB with their agencies specific accounting information (i.e., fund, account number, budget reference, class, department) to transfer money from one state agency to another in accordance with DFA's accounting requirements.

HSD notes the following, "the Department would need to add additional staffing based on the appropriation to manage the program. It is anticipated that .5 to 1 FTE would be needed based on the amount of funding. Costs were calculated by identifying the level of position needed for oversight and administration, which is a pay band 70. The midpoint salary for this pay band is $23.31, plus benefits estimated at 30%, multiplied by 2088 annual hours. The total annual cost for this position is $63,272. If the position could be shared with another existing position at a part time level of effort the annualized cost would be half. This would depend on the total appropriation."

TECHNICAL ISSUES

TRD has two technical concerns with the bill – one is critical and the other suggested to improve statute clarity. The critical concern is found in Section 3 of the bill (p. 4, l. 6). The section does not identify the Act in which the new section is to be added.

[LFC staff note: this is not a defect, but is a routine drafting device for new material. The compiler would decide the most appropriate place in statute to put the new section.]

With respect to clarity, TRD suggests that Section 2 of the bill Subsection (B)(3) (p. 3, ll. 20-24 up to the semicolon on line 24) should read: "monthly calculation amount" means an amount equal to the net receipts attributable to the taxes paid pursuant to the Oil and Gas Emergency School Tax Act for the current month less the base amount for the current month;"

TRD recommends this change because the term "net receipts attributable to the taxes paid pursuant to the Oil and Gas Emergency School Tax Act" is a defined term in this Section, and it should be consistently used. Current language is slightly off – it conveys the same meaning, but without using the specific language of the defined term.

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