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FISCAL IMPACT REPORT

Sens. Cisneros /
 Martinez / Reps. **ORIGINAL DATE** 01/18/19
SPONSOR Chandler / Romero **LAST UPDATED** 03/05/19 **HB** _____

SHORT TITLE Gross Receipts for Nonprofit Organizations **SB** 11/aHFI#1

ANALYST Clark

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21	FY22	FY23		
\$0.0	Potentially preserves tens of millions of dollars of existing revenues*				Recurring	General Fund
\$0.0	Potentially preserves millions of dollars of existing revenues*				Recurring	Local Government

Parenthesis () indicate revenue decreases

SOURCES OF INFORMATION

LFC Files

Responses Received From

Economic Development Department (EDD)
 New Mexico Municipal League
 University of New Mexico (UNM)

SUMMARY

Synopsis of HFI#1 Amendment

The House Floor #1 Amendment to Senate Bill 11 broadens the applicability of the bill, removing from the tax exemption not just the receipts of a prime contractor derived from operating a national laboratory but also the receipts of a prime contractor derived from operating a research facility owned by the state. This is intended to address concerns about the prior exclusion being too narrow, now broadening it to prime contractor receipts from the state or federal government through a contract to operate a state-owned research facility or national laboratory.

It may be helpful for the Taxation and Revenue Department (TRD) to issue a rule clarifying the definition of “prime contractor” and “research facility” as well as noting exactly what receipts would be taxable for such entities – see *Technical Issues*. It is important to note that from discussions with the amendment sponsor and everyone who assisted in drafting the language for

the amendment, the legislative intent is that this exclusion to the tax exemption should not apply to university research park corporation revenues, and two tax experts consulted on this issue report a plain reading of the language even absent this intent would not apply the gross receipts tax to university research park corporation revenues.

Synopsis of Original Bill

Senate Bill 11 amends Section 7-9-29 NMSA 1978, which provides an exemption from gross receipts taxes (GRT) on receipts of 501(c)(3) nonprofits. The bill removes from this exemption the receipts of a prime contractor that are derived from operating a national laboratory in New Mexico.

The effective date of this bill is January 1, 2019.

FISCAL IMPLICATIONS

The bill would have no fiscal impact if the state's two national laboratories continue to be operated by prime contractors without federal tax-exempt status; however, it provides a mechanism to protect the majority of the current revenue stream should the management contract be issued to a tax-exempt organization. Additionally, it would protect the majority of existing revenues if Triad, the current prime contractor for Los Alamos National Laboratory (LANL), files for and receives federal tax-exempt status. The estimate for the possible loss of state GRT revenues if the LANL contractor receives tax-exempt status is roughly \$25 million to \$30 million.

The projected potential loss related to the LANL contract was estimated by LFC staff based on documents provided by the prior national lab contractor, 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 contractor were to file and receive tax-exempt status.

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

This bill addresses the LFC tax policy principles of adequacy and equity by ensuring a continued flow of revenue from the national laboratory operators, regardless of organizational structure.

SIGNIFICANT ISSUES

Sandia and Los Alamos National Laboratories are managed by companies that do not have tax-exempt status; however, Triad is organized as a nonprofit and might be able to file for tax-exempt status, although this would likely require changes to the organization's incorporation paperwork.

Sandia National Laboratories provides extensive economic impact data in an annual public report. Here are key figures from the 2018 report:

- Sandia paid \$95 million in total GRT; and

- Sandia made \$1.2 billion in contract-related payments in New Mexico and California, and \$462 million, or 39 percent, of these payments went to New Mexico contractors.

LANL also provides useful economic impact data as Sandia, although not as detailed. Here are key figures provided in its 2018 report:

- The LANL annual economic impact report recently ceased including taxes paid, but the contractor paid \$77 million in total GRT in 2015, down from a high of \$101 million in 2011; and
- LANL made \$756 million in contract-related payments, and \$420 million, or 56 percent, of these payments went to New Mexico contractors.

The New Mexico Municipal League reports it supports this legislation.

TECHNICAL ISSUES

TRD reported in analysis on a prior, similar bill that some clarification to the bill is recommended. “Prime contractor” is not defined, raising potential questions as to whether it would be possible to structure around the exclusion.

The University of New Mexico also noted there are no definitions in the bill for “prime contractor” and “research facility” and reported an expansive interpretation by TRD could adversely impact the operations of university research park corporations.

A TRD rule providing those definitions and clarifying how the exclusions will be applied would provide clarity.

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