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

SPONSOR SFl **ORIGINAL DATE** 3/04/19 **LAST UPDATED** 3/13/19 **HB**

SHORT TITLE Create Tenancy Tax **SB** CS/CS/375/SCORCS/SFlS/aHLLC/aHTRC

ANALYST Clark

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21	FY22	FY23		
$0	Indeterminate but Positive				Recurring	Certain Local Governments

Parenthesis ( ) indicate revenue decreases

Conflicts with SB7

SOURCES OF INFORMATION
LFC Files

Responses Received From
Mortgage Finance Authority (MFA)
New Mexico Municipal League
Department of Finance and Administration (DFA)
Tourism Department
Children, Youth and Families Department (CYFD)

SUMMARY

Synopsis of HTRC Amendment

The House Taxation and Revenue Committee Amendment to Senate Bill 375 adds another exemption in which the tenancy tax will not apply if the rent paid by a vendee is set by law to benefit a low-income person. The tenancy tax would still apply to apartment rentals but not to low-income Section 8 housing.

Synopsis of HLLC Amendment

The House Local Government, Land Grants & Cultural Affairs Committee Amendment to Senate Bill 375 changes a requirement that the tenancy tax shall not apply if the rent paid by a vendee is less than $2/day to a minimum of $20/day.

Synopsis of Original Bill

The Senate Floor Substitute for Senate Corporations and Transportation Committee Substitute for Senate Bill 375 amends the Lodgers' Tax Act to create the option for certain local governments to impose a tenancy tax of up to 5 percent of gross taxable rent for lodging within their jurisdictions. This tax only applies to lodging of more than 30 days so that is does not stack on top of the existing lodger's occupancy tax that applies to lodging of 30 days or fewer.

A county, or a municipality within a county, may only qualify to impose the tax if it is a class B county with a net taxable property value between $4.5 billion and $5.5 billion. A county may only impose the tax in the remainder-of-county area outside municipal boundaries to avoid any possibility of a county and a municipality both imposing for the same area, resulting in a higher rate.

The Department of Finance and Administration (DFA) provided the following information.

> The bill would exclude all class A counties (Bernalillo, Dona Ana, Sandoval, San Juan and Santa Fe) and class H counties (Los Alamos) and the municipalities within those counties from imposing the proposed tenancy tax. Based on the April 2018 classification of counties and the 2018 final taxable valuation data, the provisions of SB375 appear to currently apply only to Eddy County (municipalities: Artesia, Carlsbad, Hope, and Loving) and Lea County (municipalities: Eunice, Hobbs, Jal, Lovington, and Tatum).

Imposing the tax requires an ordinance that states the purpose of the tax, and any revenues may only be used for that purpose. The use of the tax revenue from the tenancy tax is subject to the same restrictions as the existing occupancy tax, keeping all taxation within the Lodgers' Tax Act in alignment. Eligible uses for a portion of the tenancy tax include advertising, publicizing, and promoting tourism-related facilities and attractions and tourist-related events.

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

FISCAL IMPLICATIONS

The definitions provided for the tenancy tax are broad enough to apply to virtually all lodging, including most rental residences. Taxable premises is defined as "a hotel, apartment, apartment hotel, apartment house, lodge, lodging house, rooming house, motor hotel, guest house, guest ranch, ranch resort, guest resort, mobile home, motor court, auto court, auto camp, trailer court, trailer camp, trailer park, tourist camp, cabin or other premises used for lodging."

Using data from the 2017 American Community Survey for New Mexico, the median household income for renters is $31.1 thousand annually, and the median rent paid is $9,708 annually, or 31.3 percent of household income. If a qualifying local government imposed the tax, the median percent of household income spent on rent would increase to 32.8 percent, or an average of an additional $485 per year.

SIGNIFICANT ISSUES

Property taxes apply to property regardless of whether it is owner-occupied or rented, and this bill applies an additional tax on rental properties that does not apply to owner-occupied units. In general, lower-income households are more likely to rent a home instead of owning, so if this tax is passed on to the renter, which it presumably would be, it places an additional tax burden on these lower-income households. However, it appears this bill is intended to target mid- to long-term lodging rentals in a particular county and may be intended to capture tax revenue from more highly paid workers in the extractives industry.

MFA provided the following analysis.

> MFA is concerned that this bill will have negative unintended consequences on housing affordability because vendors (landlords) will likely pass this tax onto vendees (renters). Nationwide and in New Mexico, renters have much lower incomes than homeowners. In New Mexico, the 2017 American Community Survey reports median household incomes for renters as \$31,065 compared to \$56,310 for homeowners.
>
> The U.S. Department of Housing and Urban Development that assumes that, to be affordable, housing should be priced so that it does not consume more than 30 percent of a household's income. Households that spend more than 30 percent of their income on housing costs are deemed "cost burdened" and those that spend more than 50 percent of their income on housing costs are considered "extremely cost burdened." In New Mexico, according to the 2017 American Community Survey, 53,770 or 21.8 percent of renter households pay between 30 and 49 percent of their income on rent, and 52,765 or 21.4 percent of renter households pay more than 50 percent of their income on rent. This means that a total of 106,535 renter households or 43.2 percent of rental households are cost burdened or extremely cost-burdened. This is much higher than the rate for New Mexico homeowner households, for which 12.2 pay between 30 and 49 percent of their income on housing costs and nine percent pay more than 50 percent of their income on housing costs. Based on this data, the tenancy tax would disproportionately impact low income households that already have difficulty obtaining housing affordable for their income levels.
>
> MFA does not consider permanent rental housing to be synonymous with lodging; however, the definitions in the Lodgers' Tax Act are broad enough to apply to permanent residents who rent if there is no exemption for residency continuing for more than thirty days. There is no such exemption for the proposed tenancy tax.
>
> This bill could hinder MFA's affordable housing mission by creating new barriers to low-income renters obtaining affordable housing.

The New Mexico Municipal League provided the following analysis.

> Some municipalities, particularly in southeastern New Mexico, are experiencing extraordinary occupancy of hotels and motels by workers that are renting rooms for periods in excess of 30 days. By renting rooms for more than 30 days, those accommodations are not subject to the lodgers' tax and are unavailable for rent to short

> term occupants that would be subject to the tax. Municipalities are reliant on the lodgers' tax to fund promotion of tourism in and around those municipalities.

DFA provided the following analysis.

> The bill appears to be applicable only to Eddy and Lea counties and their municipalities. The additional tax revenue would assist these areas with funding long-term housing solutions for oil industry workers.
>
> DFA Local Government Division shares the Mortgage Finance Authority's concern that the new up to 5 percent tenancy tax will have unintended negative consequences on low income renters who will likely see an increase in their monthly rent to cover the tenancy tax as most landlords will probably pass the tax on to the tenant. An exemption of the tenancy tax for low income tenants would be recommended in order to avoid increases in monthly rent on families who are below median income thresholds.
>
> Because of the potential negative impacts on low income renters, this bill appears to be in direct conflict with SB7 that would create an occupancy surtax of up to 2.5 percent to support local governments' affordable housing initiatives.

The Tourism Department provided the following analysis.

> The creation of a tenancy tax may lead to potential revenue increases for municipalities to use toward tourism advertising, publicizing and the promotion of tourist-related facilities and attractions and tourist-related events—if, as the substitute dictates, this specific purpose is stated in the ordinance which imposes the tax. This opens the tenancy tax up for more uses than just tourism, which may cause confusion with the occupancy tax which does dictate that a percentage of revenue be used in tourism. This tax will likely most affect those municipalities with significant oil and gas industries, as those industries in particular have a number of workers who stay in lodging authorized by the Lodger's Tax Act for greater than thirty days at a time. The phrasing of the substitute appears to apply to the counties of Lea and Eddy.
>
> In other US states, a dedicated tenancy tax does not exist. In most cases, no exemption is made for thirty days, or after thirty days a general occupancy tax is levied. For example, Oklahoma's hotel tax does not exempt stays over thirty days unless the lodging primarily acts as an "apartment-like provider." Oregon restricts its transient lodger's tax to thirty days, but after that threshold has been reached, occupancy tax rules apply since the lodger is considered a resident.

CONFLICTS

DFA reports various changes included in the Senate Corporations and Transportation Committee Substitute for SB375 conflict with the Senate Corporations and Transportation Committee Substitute for Senate Public Affairs Committee Substitute for SB7. The most significant of the conflicts are: 1) each of the bills proposes conflicting language to a new Section 3-38-15.1 of the Lodgers Tax Act with SB7 creating an up to 2.5 percent occupancy surtax to be used for affordable housing and SB375 creating an up to 5 percent tenancy tax for purposes stated in local ordinances; 2) the tax exemptions proposed for the new tenancy tax do not include the existing occupancy tax exemption related to rentals by permanent residents for a period of at least 30 consecutive days; and 3) the exemption in SB375 for vendors not offering at least 3 rooms on their taxable premises has been removed for the occupancy tax pursuant to SB106 which has been signed into law (Laws of 2019, Chapter 25, February 4, 2019).

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

JC/gb/sb