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

ORIGINAL DATE 1/30/2020
SPONSOR Munoz **LAST UPDATED** **HB**

SHORT TITLE Tenancy Tax Act **SB** 63

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY20	**FY21**	**FY22**	**FY23**	**FY24**		
	No General Fund Impact				Recurring	General Fund
	Positive Impact in electing areas; no impact in non-electing areas				Recurring	Local Governments

Parenthesis ( ) indicate revenue decreases

HB105, HB117, SB63 and, SB119 all propose variants on the subject.

SOURCES OF INFORMATION
LFC Files

Responses Received From
Department of Finance and Administration, Local Government Division (DFA/LGD)
New Mexico Municipal League (NMML) on HB117

No Response Received
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

Senate Bill 63 proposes a statewide, local option tenancy tax.

DFA/LGD describes the provisions:

Senate Bill 63 creates the Tenancy Tax Act to allow counties and municipalities to impose a tenancy tax not to exceed 5 percent of gross taxable rent and proceeds from the tax shall be used only for purposes stated in the local ordinance imposing the tax. If the bill is enacted, the effective date is July 1, 2020.

FISCAL IMPLICATIONS

The provisions of this bill will primarily affect counties and municipalities in the Southeast region of the state. In those areas, the changes will expose more lodging units to tax than pay pursuant to the current Lodger's Tax statute. Also of importance, the collections are not restricted to support of tourist related activities.

Unlike HB117, HB105 or SB119, there will be no impact on governments, tenants or landlords in areas that do not elect to impose this tenancy tax.

SIGNIFICANT ISSUES

DFA/LGD notes.as follows:

> Various sections of the proposed Tenancy Tax Act are consistent with the provisions of the existing Lodgers' Tax Act as it relates to definitions of relevant terms, certain exemptions, random annual audits of vendors, enforcement, property liens, and certain ordinance requirements.
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> Some significant differences from Lodgers' Tax Act provisions include: 1) tenancy tax proceeds shall be used for purposes stated in local ordinances rather than having statutory limitations on the use of proceeds; 2) vendees can provide proof to a vendor of income below 185 percent of federal poverty guidelines in order to be exempt from the tenancy tax; 3) all local governing bodies enacting the tenancy tax shall select for annual random audits one or more vendors regardless of the amount of tax being collected; and 4) there are no requirements that a local ordinance state vendor licensing procedures.

LFC staff note that the tenancy tax would not apply for the first 30-days of occupancy of a rental premise. This tenancy tax is intended as a companion and supplement to the conventional Lodger's Tax.

This bill allows an exemption for tenants that intend to make the premises a residence or household or if the tenant can demonstrate an income less than 185 percent of federal poverty guidelines. Other exemptions mirror those of the Lodger's Tax.

NMML provided the following perspective on the provisions of HB117. However, the comments are applicable to the provisions of this bill. Where the comments submitted referred to the Lodger's Tax, LFC has substituted reference to "Tenancy Tax":

> Some municipalities are experiencing long term rental of taxable premises by companies that are temporarily operating in certain portions of the State. Under current statute, when companies enter into long term agreements to rent taxable premises, after the first 30 days the premises is no longer subject to the Lodgers' Tax. The nature of the long term use of a taxable premises places additional burdens on local governments without an opportunity to defray those costs thru revenues generated by the Lodgers' Tax.
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> This legislation will allow for collection of a new Tenancy Tax on long term rentals of taxable premises and allow the municipality to use certain proceeds to defray the cost of services to the long term renters.

ADMINISTRATIVE IMPLICATIONS

If Senate Bill 63 is enacted, the DFA Local Government Division (LGD) would be required to either update the Lodgers' Tax Rule, 2.105.2 New Mexico Administrative Code, to include the new up to 5 percent tenancy tax, or create a separate rule specific to the Tenancy Tax Act. DFA/LGD would also need to update the lodgers' tax reporting form, which is required on a quarterly basis to be submitted by counties and municipalities imposing the occupancy tax, to capture information on the proceeds and uses of the new tenancy tax. Furthermore, Counties and municipalities who choose to impose the new tenancy tax via a local ordinance will likely have administrative costs associated with identifying applicable rental properties and designing a process for collecting the tenancy tax proceeds.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB105, HB117 and SB119 amend the existing Lodger's Tax statute to include in some fashion longer-term tenancy on a month-to-month basis.

OTHER SUBSTANTIVE ISSUES

Laws 2019, Chapter 25 (SB106) effective January 1, 2020 extended the lodger's tax to short-term rentals of individual guest houses and fewer than three units.

LG/sb/al/rl