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## FISCAL IMPACT REPORT

SPONSOR Lujan, B. DATE TYPED 3/12/05 HB 411/aHBIC/aHJC

SHORT TITLE Create Tax Fraud Investigation Division SB \_\_\_\_\_

ANALYST Rosen

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI		NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
	Indeterminate	Indeterminate (See TRD comments under Fiscal Implications)	Recurring	General Fund
	\$30.0	10% increase	Recurring	DOL Penalty & Interest Fund
	\$1,275.0	Approximately 7-10% Increase	Recurring	Workers' Compensation Administration Fund
	\$340.0	Approximately 7-10% Increase	Recurring	Uninsured Employer's Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Taxation and Revenue Department (TRD)

Attorney General's Office (AGO)

Department of Labor (DOL)

Workers Compensation Administration (WCA)

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

## SUMMARY

### Synopsis of HJC Amendment

House Judiciary Committee amendment to House Bill 411, as amended, strikes various amendments and adds various changes to both HBIC amendments and the original bill. Significant changes include:

- HJC amendment #1 deletes HBIC amendments 6, 7, and 12 through 18. HBIC amendment #6 is grammatical in nature. HBIC amendment #7 defines the word “tax” and the word “willful” as those words are found in the statute. HJC moves those definitions from section three to section four of the statute which arguably reads easier. HBIC amendments 12 through 18 tie the degree of crime to the dollar amount of tax that a state revenue worker fails to collect, account for, or pay over to the state. For example, if the state worker failed to collect, account for, or pay over \$100.00 or less that crime would be a petty misdemeanor. If a state worker failed to collect, account for, or pay over more than \$20,000 that would be a second degree felony. The HJC amendment eliminates this incremental penalty structure.
- HJC amendment #2 deals with section 7-1-72 and similarly deletes the incremental degree of crime based on the monetary loss as to section 7-1-72 (willful failure to file income taxes).
- HJC amendment #4 re-inserts the penalty language that existed prior to introduction of the bill. This language penalizes a violator by authorizing a fine of not more than \$5,000 or imprisonment of not less than six months nor more than three years, regardless of the dollar amount.
- HJC amendment #5 deletes the reference to Section 31-18-15, which authorizes the incremental penalty structure, and also inserts language defining the word “tax” and “willfully” at the end of section 3 as those terms are found in the statute.
- HJC amendment #6 deals with section 5 of the original bill, requiring that a state worker who fails to collect, account for, or pay over taxes must do willfully and with intent to defraud. The original version of the bill does not include the language intent to defraud.
- HJC amendment #7 replaces penalty provisions which result from deletions of HBIC amendments 12 through 18. The language in HJC amendment #7 is the current state of the law; a \$5,000 fine and from 6 months to three years incarceration. HJC amendment #7 also inserts the definitions of “tax and “willfully” as in HJC amendment #5.

### Significant Issues

According to AGO, a significant issue is the deletion of the incremental degrees of penalty according to the amount of dollar loss. AGO believes the amendments are more in line with the penalty provisions of forgery, a third degree crime which carries basic sentence of 3 years incarceration and or a \$5,000 fine. This penalty applies no matter what the dollar amount the offender has actually taken from his victims. It should be noted that the proposed amendments simply restate the current law.

AGO notes a technical issue may also exist. HJC amendment #2 deletes lines 8 through 25 on page 17. AGO reports lines 11 through 13 contain original language that now appears in Section 7-1-72 of the current statute. AGO believes HJC amendment #2 could be interpreted to mean deleting the entire section of 7-1-72 and not just HBIC amendments.

#### Synopsis of HBIC Amendment

House Business and Industry Committee amendment to House Bill 411 makes numerous technical changes to language in the original bill with little or no substantive effect. Additionally, the amendment expands authorization for release of certain taxpayer information to a local body that licenses professions of occupations pursuant to Chapter 36, Article 2 NMSA 1978 or Chapter 61 NMSA 1978; further defines “tax” so that it does not include civil penalties or interest; further defines “willfully” to mean intentionally, deliberately or purposely, but not necessarily maliciously; changes relevant statutory references related to time frame for prosecution from the Tax Administration Act to Sections 7-1-72 or 7-1-73 NMSA 1978 or Section 5 of this 2005 act; and changes “crime in which multiple occurrences are aggregated in” to “series of crimes involving multiple filing periods within.”

#### Synopsis of Original Bill

House Bill 411 authorizes TRD to establish a tax fraud investigations division to investigate possible criminal violations of the revenue laws of the state. The criminal fraud investigation authority of the division would be in addition to TRD’s civil responsibilities. Specific provisions of the bill include:

- The statute of limitations for criminal prosecution of violations of New Mexico’s tax statutes would be suspended for the period of time during which a subpoena or summons is being challenged by a taxpayer in court.
- The confidentiality statutes are amended to permit TRD to share information with the courts in cases of tax fraud or other crime involving state tax liabilities.
- Penalties for tax fraud are modified: for principal amounts up to \$2,500, fourth degree felony; \$2,500 to \$20,000, third degree felony; over \$20,000, second degree felony.
- The definition of tax fraud is expanded to cover willfully assisting in the preparation of a fraudulent tax return.
- A new set of criminal penalties is established for the willful failure to collect and pay overdue taxes.
- TRD would be authorized to employ law enforcement officers to investigate criminal tax fraud cases. These officers would be required to receive appropriate law enforcement training.
- The time limit for initiating prosecution of felony violations under the Tax Administration Act would be extended from three years to five years.

#### Significant Issues

TRD reports the proposed statute provides an important enforcement tool to prosecute cases of criminal tax fraud in the state. Successful prosecution requires highly specialized knowledge, investigative techniques and experience. The creation of the new division will give the state more ability to successfully prosecute these types of crimes.

DOL indicates this bill permits Memoranda of Understanding between DOL and TRD for exchange of information on taxpayers to improve TRD's collections efforts.

WCA indicates this bill provides for enhanced information sharing so WCA personnel can assist TRD in collecting the assessments under 52-5-19 and 52-1-9.1 that fund the Workers' Compensation Administration Fund to operate the agency and the Uninsured Employers Fund, respectively. The enhanced communication provided by the addition of Sub-Section II to Section 7-1-8 will help stabilize the income of the WCA at an appropriate level and keep the Uninsured Employer's Fund solvent. WCA notes this provision has been previously reviewed and approved by the Workers' Compensation Advisory Council in previous sessions.

### **PERFORMANCE IMPLICATIONS**

Indeterminate

### **FISCAL IMPLICATIONS**

According to TRD, the Tax Fraud Investigations Division has requested a budget under the Tax Administration Act program of \$1,024,000 for fiscal year 2006.

TRD indicates uncertain positive impact on state revenues would result due to successful prosecution of tax fraud cases. TRD believes that more publicized prosecutions tend to heighten public perception of tax compliance and enforcement, thereby enhancing voluntary compliance.

According to DOL, this bill will enable DOL staff to collect an additional 10% of delinquent contributions, penalties and interest owed to DOL as a result of exchanging information with TRD. The agency's operating budget for this fund is approximately \$300.0, 10% of which would be \$30.0.

WCA reports collections for the Workers' Compensation Administration Fund have been flat for several years, despite a growing employer base. Based on DOL statistics and compared with actual collections by TRD at the end of 2003, WCA indicates approximately \$1.5 million currently is not being collected. This bill makes possible cooperation between the WCA and TRD to enhance identification and auditing of non-payers of these WCA assessments. WCA anticipates growth in income to both the Workers' Compensation Administration Fund and the Uninsured Employer's Fund as an indirect result of the information sharing provided by this bill.

### **ADMINISTRATIVE IMPLICATIONS**

Indeterminate

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

WCA reports annual expenditures of funds from the Workers' Compensation Administration Fund now exceed annual revenues. At the same time there is substantial evidence that some employers are evading their responsibility to pay. If the bill is not enacted this condition will continue, the Workers' Compensation Administration Fund assessment will need to be increased, the fund will require supplementation from the general fund, or the fund will become insolvent. The same is true with respect to the Uninsured Employer's Fund.