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

SPONSOR Griego, E. **ORIGINAL DATE** 01/25/12 **LAST UPDATED** 01/30/12 **HB**

SHORT TITLE Local Music Radio Station Gross Receipts **SB** 43

ANALYST Walker-Moran

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY12	FY13	FY14		
	($58.0)***	($58.0)	Recurring	General Fund
	($42.0)***	($42.0)	Recurring	Local Governments (GRT)

(Parenthesis ( ) Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	$4.0	$40.0	$40.0	$84.0	Recurring	Taxation and Revenue Department

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Department of Cultural Affairs (DCA)
Taxation and Revenue Department

SUMMARY

Synopsis of Bill

Senate Bill 43 provides for a New Mexico Music Tax Credit to be granted to commercial radio stations airing work of local musicians. The credit is 15% of gross receipts tax liabilities from advertising and other sales made by the radio station. The radio station must include in its daily programming New Mexico musical acts for at least 20% of its time on the air. The music

commission is the responsible agency for verifying this airtime requirement.
The music commission and DCA are required to compile an annual report for the legislature detailing costs and benefits of the tax credit. Benefits will include jobs created, number of stations qualifying, percentage of airtime devoted to New Mexico musical acts and royalties paid to musicians. Beginning in 2016, the Revenue Stabilization and Tax Policy Committee is required to review the effectiveness of the New Mexico Music Tax Credit.

SB 43 provides that a taxpayer who applies for a credit must agree to a waiver of confidentiality.

The Effective Date is July 1, 2012.

FISCAL IMPLICATIONS

Per DCA, sources including the New Mexico Broadcasters Association and radio station executives estimate that the typical commercial radio station in the state has annual gross revenues between $150,000 and $400,000. Overall, there would probably never be more than twenty stations statewide that would choose to take advantage of the tax credit in any given year.

Taxation and Revenue Department does not have any new independent data to support this analysis, but analysis provided by the Department for SB-342 in the 2011 Regular Session remains relevant. Figures taken from that analysis have been updated to reflect the current distribution of gross receipts tax revenue between the state and local governments.

*** There is a danger that the revenue loss due to this credit could be much higher because of the ambiguity of what other sales made by a business may qualify for the credit. This estimate is highly uncertain. Less than one twelfth of New Mexico radio stations are assumed to qualify for the proposed credit. Their assumed revenue is based on data from the Radio Advertising Bureau. An average GRT rate of 7.2% is used for this estimate.

Policy Issues: The proposed tax expenditure creates a trade-off between targeted economic development goals and the tax policy goals of simplicity, efficiency and equity. The complexity of the credit will add significant compliance and administration costs to New Mexico's tax system relative to the size of the incentive. Not treating similar business activity the same violates the equity principal of good tax policy. This bill has a non-tax policy goal to stimulate the music industry in New Mexico that should be evaluated with the same framework used for spending choices such as performance budgeting criteria.

SIGNIFICANT ISSUES

SB 43 requires the Music Commission to monitor the New Mexico Music Tax Credit by gathering data and preparing an annual report to the legislature that includes the aggregate amount of tax credit claimed, the number of radio stations claiming the credit, the number of jobs created that can be attributed specifically to the tax credit, the total number of hours of programming of New Mexico musical acts in the year compared to the total number of programmed hours reported by radio stations claiming the credit, information regarding the sales or use of music made or produced by New Mexico musicians and any other information deemed necessary by the Music Commission and the Department of Cultural Affairs to assess the effectiveness of the credit, and that report shall be submitted to the committees no later than November 1 of each year.

ADMINISTRATIVE IMPLICATIONS

The Music Commission currently has neither paid staff nor budget to hire a contractor to monitor the tax credit and produce the required reports. The Department of Cultural Affairs and New Mexico Arts, to which the Music Commission is administratively attached, would therefore have to assign existing staff to monitor the tax credit and produce the required reports, which may impact other DCA programs.

TRD reports a moderate administrative impact; however, compared to the size of the incentive this proposal has a relatively high administrative cost. The lost General Fund revenue from the credit could be roughly equal to the costs New Mexico taxpayers in aggregate will pay for administering the credit. There will be low initial costs to create a new form, revise instructions and publications at a cost of $4,000. Ongoing tasks including processing, approving, monitoring, tracking, auditing, and reporting on the credit will be spread across several divisions with an overall impact equal to approximately 1/2 an FTE at a cost of $40,000. A lot of coordination will be required to ensure the Department is requesting/collecting the data needed to complete reports.

It will be difficult for the Department to audit the credit and ensure proper compliance. Since the credit will be claimed with the filing of a monthly CRS-1 Form, there will be little time to review the validity of the credit being claimed. It is not clear on how the Department will verify if the 20 percent air time requirement is met.

TECHNICAL ISSUES

A New Mexico business that owns and operates a qualifying radio station may have significant sales from unrelated activity; however, this credit applies to both gross receipts tax liability "from advertising and other sales." The intent may be to limit the credit to only receipts related to activities of radio broadcasting, but as currently drafted there is a large amount of uncertainty.

The reporting requirements that this proposal places on the Department that include disclosing taxpayer information are in direct conflict with the general confidentiality statutes under Section 7-1-8 NMSA 1978. The general confidentiality statutes carry criminal penalties including imprisonment for up to one year. Without amending the general confidentiality statutes in Section 7-1-8, it is likely that the Department will not be able to comply with the reporting requirements. For example, the likelihood is that there will be a small number of eligible taxpayers claiming the credit. Even if the Department were to publish only the total amount of the deductions claimed, this could compromise taxpayer confidentiality.

Page 3, line 22 – "living in New Mexico" should be changed to "whose place of residence is in New Mexico" so there is no misinterpretation of the term. Even with the change the definition of "New Mexico musical act" in Section 1 Subsection G is inadequate because it requires the taxpayer to possess information regarding the domicile of the performing musicians that they may not have access to because it is confidential information of the musicians. It also fails to address the impact of performances by musical acts with membership of both New Mexican and non-New Mexican musicians.

OTHER SUBSTANTIVE ISSUES

This legislation meets the definition of an "economic development tax incentive" as defined in 9-15-56 NMSA 1978. An economic development tax incentive must include certain minimum provisions within its enabling statute. This bill appears to satisfy those requirements.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to DCA, New Mexico Musicians will continue to have a difficult time getting their music played on local radio stations, thereby depriving them of income that could add to the economic benefit of all New Mexicans.

POSSIBLE QUESTIONS

Does the bill meet the LFC tax policy principles?
Adequacy: Revenue should be adequate to fund needed government services.
Efficiency: Tax base should be as broad as possible and avoid excess reliance on one tax.
Equity: Different taxpayers should be treated fairly.
Simplicity: Collection should be simple and easily understood.
Accountability: Preferences should be easy to monitor and evaluate

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