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FISCAL IMPACT REPORT

ORIGINAL DATE 01/30/13

SPONSOR Rehm/Ivey-Soto LAST UPDATED 02/13/13 HB 65/aHHGAC

SHORT TITLE Local Gov't Refunds of Fees SB _____

ANALYST Boerner

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$0.0	\$0.0	\$0.0	Nonrecurring	None

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)

SUMMARY

Synopsis of HHGAC Amendment

Amendment 1 strikes the definition of local government agency as “political subdivision of the state or an agency of a political subdivision of the state” and replaces it with “Class A county with a population greater than five hundred thousand.” The effect is to make the provisions in Section 1 of the bill applicable only to Bernalillo County.

Synopsis of Original Bill

This bill provides that when more than 15 days have lapsed since a fee was paid to a local government agency, the local government agency must not require the payer to make a refund (or partial refund) request in person. Further, after 15 days the local government agency must not require the individual requesting a refund (or partial refund) to provide proof that the payment check has cleared the paying bank.

FISCAL IMPLICATIONS

None noted.

SIGNIFICANT ISSUES

It is likely that the various local governments, subdivisions, and agencies, etc. that would fall under the purview of this bill each have their own formal or informal policies and procedures for granting refunds to those who submit payments. The DFA points out that all such entities should have clear policies and procedures in place to avoid confusion and allow for better customer service for local government constituents. To that point, the DFA offers suggestions for improving the process overall:

- The bill does not specify the conditions that would allow a legitimate refund request to be made. The "local government agency" should determine if a refund is actually warranted. As written, the issuer of the payment can make an unsubstantiated demand for a refund.
- Since the issuer of the check would not be required to request the refund in person, there should be a method to determine if another person, other than the issuer, can make the refund request. A release document identifying such a person requesting by proxy should be signed by the issuer. Whether the request is made by proxy or by mail, a standard refund document should be necessary to provide an audit trail since this is a monetary transaction.
- Since the issuer is not required to provide proof that the check used to pay the fee has cleared the paying bank, the "local government agency" must still be required to verify, on its own, whether the check has cleared. A refund should not be expected if the check has not cleared; such a situation could expose the "local government agency" to an audit finding and create the public perception that financial transactions are not being properly controlled.

TECHNICAL ISSUES

The terms in this bill needs some clarification:

- 1) The definition of "local government agency" as a political subdivision, or an agency of a political subdivision, of the state is very vague. "Political subdivision" could have its own definition to specify counties, incorporated municipalities, and any special district that has its own governing board and provides services for the benefit of their constituents in exchange for revenues collected from those being served.
- 2) "Fee" should be defined in order to differentiate it from taxes, dues, penalties, and interest, in order to avoid confusion of what constitutes a fee.

AMENDMENTS

Consider amending this legislation taking the comments from the "Significant" and "Technical" sections in this analysis into consideration.

CEB/svb:blm