

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (www.nmlegis.gov). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 2/19/15

SPONSOR Hall LAST UPDATED _____ HB 475

SHORT TITLE Tax & Rev. Dept. Info to NMFA SB _____

ANALYST Graeser

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		28.0	0.0	28.0	Nonrecurring	TRD operating

* In thousands of dollars Parenthesis () indicate expenditure decreases

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Finance Authority (NMFA)

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 475 provides that TRD may prepare a report for the use of NMFA concerning the amount of municipal and county gross receipts taxes and governmental gross receipts tax paid by every government entity in the state. TRD may refuse to provide this information. Note that this permission does not extend to taxpayer-specific data for the municipal and county gross receipts taxes, but does permit TRD to release taxpayer specific information regarding Governmental Gross Receipts taxpayers.

The effective date of the act is July 1, 2015.

FISCAL IMPLICATIONS

NMFA notes that "...maintaining the AAA/Aa1 ratings of the NMFA's Public Project Revolving Fund ("PPRF") ensures that NMFA and municipal entities that fund infrastructure through the PPRF will minimize financing costs."

The bill's provisions have no revenue impact.

Some of the reports permitted by the bill's provisions are already prepared and published by TRD as the RP-500. The RP-500 industry tabs allocate regular gross receipts to locations and sectors, but redact the data to prevent release of individual taxpayer financial data. This report is provided under the general provision that TRD may release statistical information as long as individual taxpayer data cannot be discerned from the report. (7-1-3 (S) ... "return information" does not include statistical data or other information that cannot be associated with or directly or indirectly identify a particular taxpayer). The RP-500 also provides substantial statistical information regarding the PPRF, although the data is aggregated to include returns and payments from all government entities. Whether TRD would agree to develop a report that lists individual government taxpayer financial data is questionable. It might be as simple as slightly modifying an existing in-house report or might require extensive analysis and programming. The bill does not require TRD to develop this report, only permits it.

SIGNIFICANT ISSUES

The following analysis was provided by NMFA:

“Under current law, NMFA does not have access to any of the underlying GGRT data – what NMFA knows about GGRT is limited to the amount of its monthly distributions.”

“The Public Project Revolving Fund (PPRF) is rated AAA/Aa1 primarily due to its 75% share of GGRT revenues. Rating agencies and investors in NMFA bonds monitor GGRT closely. Since inception of the GGRT, there have been only two years in which GGRT has declined from the previous year – 2002 and 2014. Although premature at this point, GGRT receipts may also decrease slightly in 2015. Due to this recent trend, rating agencies and investors want to know the key factors as to why and where GGRT growth has declined. After discussions between NMFA and the New Mexico Taxation & Revenue Department (“Tax & Rev”), Tax & Rev advised NMFA to seek legislation to be included in Section 7-1-8.8, as proposed by this bill.”

“In addition to information on GGRT trends and GGRT as an economic indicator, investors and rating agencies are interested in concentration risk, including concentration risk that the PPRF has with GGRT distributions. Typically, in Official Statements related to bond issues, issuers must provide information about key aspects of the financing. Key issues include, for example and without limitation, the top 10 borrowers providing loan revenues. Official Statements are subject to Securities and Exchange Commission (“SEC”) and Internal Revenue Service (“IRS”) regulations, and require sign-off from Disclosure Counsel before bonds can be issued. The NMFA, in its Official Statements, should be listing top GGRT payers, defined as those providing more than 5% of total GGRT. NMFA is not able to provide that information currently. The bill will enable NMFA to receive from Tax & Rev the GGRT reporting information the financial markets expect NMFA to provide.”

“The bill also allows NMFA to receive gross receipts tax (“GRT”) data. One third of all PPRF loan revenues are generated from loans for which GRT is pledged, thus information about GRT is key business data.

As described above, NMFA seeks taxpayer-specific, top-ten and concentration information regarding both the governmental gross receipts tax and the regular gross receipts tax. It should be pointed out that counties and municipalities do not have the right to the information unless an

“error” has occurred (7-1-8.1 {C} NMSA 1978). It is unlikely that TRD would agree to provide NMFA with data that cannot be provided to counties and municipalities regarding the regular gross receipts tax.

(6-21-4 NMSA 1978) Employees of the NMFA are not considered State Government employees, subject to the penalties of 7-1-76 NMSA 1978 (see Technical Issues below). Because the penalty for release of confidential information is not applicable to the staff of the NMFA, TRD employees would bear the brunt of unauthorized release of confidential information, for example, to a local government via the staff of NMFA. Under those conditions, TRD might refuse to provide unredacted information to NMFA, even with the authority granted by this bill. This comment is particular to the regular gross receipts tax.

In aggregate, TRD is already reporting in some detail the total amount paid by all gross receipts taxpayers and governmental gross receipts taxpayers paid in the monthly RP-500 report. For example, for the December 2014 report, the NMFA Public Project Revolving Fund receives 75% of the total collections of governmental gross receipts tax, including penalty and interest. State Parks division receives 14% of the proceeds, Cultural Affairs Department receives 1% and the YCC receives 10%.

NMFA Public Project Revolving	CRSPPR			
<u>Option</u>	<u>Tax</u>	<u>Penalty</u>	<u>Interest</u>	<u>Disbursement</u>
910-NMFA Public Project	2,138,177.61	3,232.72	167.37	2,141,577.70
** 910-Total NMFA Public Project **	2,138,177.61	3,232.72	167.37	2,141,577.70
Total	2,138,177.61	3,232.72	167.37	2,141,577.70
<u>Total Distributed:</u>	<u>2,141,577.70</u>			

PERFORMANCE IMPLICATIONS

Release of information to NMFA would not affect the performance goals of any State Government agency. NMFA is considered “a public body politic and corporate, separate and apart from the state, constituting a governmental instrumentality.”

ADMINISTRATIVE IMPLICATIONS

TRD reports a moderate ITD GenTax impact (320 hours). This is the historical time required for similar data transfers to other agencies and includes time in file creation, format, testing and file format production and transfer.

LFC staff note that TRD staff are not required to provide this information, only allowed to provide it. However, the staff are currently allowed to provide redacted data to anyone, and regularly publish both the RP-500 and the RP-80. While it takes some expertise to interpret these reports, expert users can almost always infer credible amounts for most purposes. The GGRT concentration data sought by NMFA for use in disclosure documents could be released by TRD on an aggregate basis without the permission of this bill. For example, rather than listing taxpayers by name and address, the report could refer to the ten or more individual Government taxpayers as “County Government water authority #4” or “University Subdivision #1.”

TECHNICAL ISSUES

TRD points out this bill would cover a number of quasi-governmental agencies such as certain Boards, Commissions, Soil and Water Districts, Conservancy Districts and “Authorities” that by virtue of language in the statutes creating them are “political subdivisions” (or words to that general effect) of the State of New Mexico. Although DFA/LGD approves the budgets for almost 600 political subdivisions of the State, the vast majority of these entities are not Governmental Gross Receipts taxpayers.

All of the other entities listed in 7-1-8.8 NMSA are agencies or instrumentalities of State government. The provision is expressed as, “An employee of the Department (TRD) may reveal information obtained from tax returns to ...” The agencies listed include the legislature for certain taxes, the attorney general for information regarding the master settlement agreement, the Commissioner of Public Lands, the Secretary of Human Services, DOIT for preparation of voter lists and a number of other entities for particular purposes. The New Mexico Finance Authority is not a State agency. It is what properly would be called a “para-statal.” The agency is not subject to State procurement or personnel rules and employees of the NMFA are not considered State employees for other purposes. Thus, the penalty provisions of 7-1-76 NMSA 1978 are not quite appropriate.

7-1-76 Revealing information concerning taxpayers. (2009)

A person who reveals to another person any return or return information that is prohibited from being revealed pursuant to Section 7-1-8 NMSA 1978 or who uses a return or return information for any purpose that is not authorized by Sections 7-1-8 through 7-1-8.10 NMSA 1978 is guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than one thousand dollars (\$1,000) or imprisoned up to one year, or both, together with costs of prosecution, and shall not be employed by the state for a period of five years after the date of the conviction.

OTHER SUBSTANTIVE ISSUES

For the most part, the information permitted to be released by the provisions of this bill does not seem to be confidential, since the breach of confidentiality does not require the listing of taxpayers by name and address. The information could be considered (with minimal redaction required to preserve confidentiality), to come within the permission to release statistical information, as long as the information provided by an individual taxpayer could not be inferred.

7-1-3 (S) ... "return information" does not include statistical data or other information that cannot be associated with or directly or indirectly identify a particular taxpayer;

Consider the following extract of a single month (May 2014 Sales) data for the PPRF.

	NMFA Public Project Revolving				
	# Returns	Total Gross	Taxable Gross	Recipient Paid	Amt paid per return
Utilities	37	\$16,442,394	\$15,114,093	\$578,176	\$15,626
Public administration	67	\$34,967,382	\$31,420,040	\$1,302,664	\$19,443
All Industries	154	\$58,687,927	\$50,586,695	\$2,035,811	\$13,220

It is highly unlikely that the top 10 taxpayers would be anything other than municipal water utilities or counties or municipalities. 2/3rds of taxpayers and 92% of the money was paid in that

month in these two categories. Budget information for all budget entities in the state can be obtained from the DFA/LGD without any confidentiality restrictions.

SUGGESTED AMENDMENTS

Delete the authority and permission to release information to NMFA regarding municipal and county gross receipts taxes. This would reduce the controversy over the fact that NMFA is not a state government agency and that NMFA is soliciting data that is denied to other users with, perhaps, more relevance.

LG/bb/je