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FISCAL IMPACT REPORT

ORIGINAL DATE 2/10/15
 SPONSOR Cisneros LAST UPDATED 3/18/15 HB _____
 SHORT TITLE Lodgers' Tax Audits SB 464/aSJC
 ANALYST Malone

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 402, which eliminates an exemption from the occupancy tax.
 Duplicates HB 326

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Municipal League (NMML)
 Office of the Attorney General (AGO)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 464 clarifies that the governing body of a municipality or or county maintains the authority to select any vendor for audit.

Synopsis of Original Bill

Senate Bill 464 amends Sections 3-38-17.1, 3-38-17.3, 3-38-19, and 3-38-22 NMSA 1978, pertaining to the Lodgers' Tax Act. Section 3-38-17.1 is amended to permit a municipality or county, for good cause, to select any vendor for audit to verify the amount of gross taxable rent subject to the occupancy tax to ensure that the full amount of occupancy tax on that rent is collected.

Section 3-38-17.3 is amended to substitute the municipality or county for the attorney general and district attorney as the entitiy charged with enforcing the Lodgers' Tax Act or any local ordinance adopted pursuant to the act.

Section 3-38-19 is amended to create the penalty of a petty misdemeanor and a fine up to \$500 or imprisonment for up to 90 days for a violation by any person of the new provision of the occupancy tax to participate and cooperate in an audit made pursuant to Section 3-38-17.1.

Lastly, Section 3-38-22 is amended to allow for an advisory board of more than five members (must have at least five) in municipalities that impose an occupancy tax.

FISCAL IMPLICATIONS

None noted.

SIGNIFICANT ISSUES

NMML notes that the current law may not adequately enable municipalities and counties to order audits and to compel compliance with the audit requirement. This bill will clarify the powers of local government to compel audits and to enforce the audit requirement.

AGO points out that who might be an authorized representative is left to the taxing authority. Presumably, it could be the city or county attorney, or it might be a private debt collection agency employing a private attorney. The Legislature might wish to consider explicitly providing authority for employing non-governmental collection agents, if that is the intent.

The lodgers' tax is administered at the local level.

DUPLICATION AND RELATIONSHIP

Duplicates HB 326.

Relates to SB 402, which eliminates an exemption from the occupancy tax.

TECHNICAL ISSUES

AGO notes that the provision for other than random selection of vendors for audit has the potential for decisions on who to audit to be made at the behest of special interests. This could lead to allegations of arbitrary and capricious enforcement, improper favoritism, or selective prosecution. The Legislature may wish to consider amending NMSA 1978, Section 7-1-8.9 to authorize the Taxation and Revenue Department to reveal information on gross receipts taxes reported by lodging businesses within the jurisdiction, so that a discrepancy between what is reported to the Department and what is reported locally can form an objective selection criteria.

CEM/je/bb