FISCAL IMPACT REPORT

SPONSOR	Payne	**ORIGINAL DATE** / **LAST UPDATED**	1/27/16 / 2/3/16	**HB**	
SHORT TITLE	Disaster Response Tax & Licensure Exemptions			**SB**	19/aSCOTC
				ANALYST	Jorgensen

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	**FY17**	**FY18**		
	**	**	Nonrecurring	General (GRT, PIT, and CIT)
	**	**	Nonrecurring	Local Funds (GRT)

(Parenthesis ( ) Indicate Revenue Decreases)

**The potential revenues affected by the provisions of this bill are not estimable. It is not clear that this bill will create a long-term revenue loss. See discussion below.

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Secretary of State (SOS)
Homeland Security and Emergency Management (HSEMD)

SUMMARY

Synopsis of SCOTC Amendment

The Senate Corporations and Transportation Committee Amendment strikes the definition of critical infrastructure in two places. The amendment is expanded to clarify that natural gas gathering, processing, storage, transmission, and distribution systems are critical infrastructure. Additionally, the amendment classifies crude oil and refined product pipelines as critical infrastructure.

Synopsis of Original Bill

Senate Bill 19 proposes to provide temporary taxation and licensure exemptions for certain out-of-state businesses and individuals who respond to declared disasters within New Mexico and whose work is performed on critical infrastructure. The tax treatment extends to income tax, corporate income tax, gross receipts and compensating taxes and property tax for the temporary duration of the emergency and residency. The bill allows compensation to be allocated to the taxpayer's state of residence. This applies to activities, labor or services performed in this state for disaster or emergency–related work in response to a declared disaster during the disaster response period.

FISCAL IMPLICATIONS

TRD sates that neither future taxpayer liabilities nor future licensing fees not collected are a revenue loss as this revenue is neither projected not collected. For this reason, TRD did not conduct a quantitative analysis for this bill and characterizes any potential revenue loss as minimal.

The revenues involved in this bill are intrinsically non-recurring and largely not estimable. Disasters occur, of course, but when they occur, how large they are and what proportion of the control and remediation effort is state-based and what proportion are delivered by out-of-state resident individuals and firms is highly speculative. The larger the scope of the disaster, the more likely the payments to the responders will be from federal sources.

While federal law permits host states to tax the wages and business income of non-resident individuals and businesses, any tax imposed on this source of income by the state in which the services are provided must be credited against the resident host state tax liability. As more states adopt this type of disaster response exemption legislation, allocating the income of our New Mexico disaster response crews and other responders may make up for any short-term revenue losses.

It is not clear whether this bill creates a tax expenditure. It can be argued that the bill simply defines the tax base. Most experts would agree with the proposition that payments to nonresident responders during the time of a disaster is not an appropriate tax base.

TRD states the structure of this bill reduces accountability. There are two ways of structuring this type of bill: (a) by indicating that businesses and employees temporarily in the state do not establish nexus, and thus have no reporting obligations; and (6) by making the amounts earned deductible from the various tax programs. The second structure promotes accountability because the amounts of the deductions could be tracked over time. The first structure, which the bill currently employs, renders TRD unable to account for the revenue loss by eliminating filing obligations.

SIGNIFICANT ISSUES

HSEMD notes that implementing this bill would be beneficial to out-of-state businesses who are working in New Mexico as a result of a declared disaster and/or emergency. An example of this would be a utility company repairing and/or restoring critical infrastructure and/or services in New Mexico damaged during or immediately after a declared disaster or emergency that require immediate attention.

TRD states the bill limits qualifying disaster response to services to projects that involve critical infrastructure. It does not include services performed to stem other types of emergencies, such as environmental contamination, like the Animas River spill, or wildfires. Some consideration should be given to the scope.

ADMINISTRATIVE IMPLICATIONS

There may be a moderate impact on IT systems at TRD; the agency notes changes to rules in the GenTax and Taxpayer Access Point will be needed and may require up to 500 hours of staff time to complete.

TECHNICAL ISSUES

TRD states that on page 6, line 6, Subsection C states "Out-of-state businesses and out-of-state employees shall be ***required to pay*** transaction taxes and fees, including fuel taxes and gross receipts taxes…" Under current law, some transaction taxes and fees, especially gross receipts taxes, *are not the liability of the buyer*, but are simply passed on to the buyer as an element of the purchase price. This language implies the buyer is directly liable.

OTHER SUBSTANTIVE ISSUES

TRD notes that Section 1(A)(4)(c) provides that compensation of a nonresident taxpayer may be allocated to the taxpayer's state of residence "if the activities are performed in this state for disaster- or emergency-related critical infrastructure work in response to a declared state disaster or emergency during a disaster response period, as defined in the Tax Administration Act." "Critical infrastructure" is defined in Section (E)(1) and means property and equipment owned or used by communications networks, electric generation, transmission and distribution systems, gas distribution systems, water, pipelines and related support facilities that service multiple customers or residents … "Infrastructure work" is fairly specific. This appears to provide a benefit to specific individuals and companies while not providing the same benefit to those who provide a service in emergencies that do not relate to "infrastructure" such as environmental contamination, like the Animas River spill, or wildfires.

CJ/al/jo