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

SPONSOR Munoz
ORIGINAL DATE 3/7/17
LAST UPDATED
HB

SHORT TITLE Exclude Some Local Gov'ts From Hold Harmless
SB 451

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue					R or NR **	Fund Affected
FY17	FY18	FY19	FY20	FY21		
	(18,000.0)	(17,000.0)	(16,300.0)	(15,600.0)	R	Counties > 48K pop
	(260.0	(250.0	(240.0)	(230.0)	R	Counties < 48K pop
	(14,800.0	(14,000.0	(13,400.0)	-$12,800.0)	R	Municipalities > 10K pop
	(41.0)	(39.0)	(37.0)	-$35.0)	R	Municipalities < 10K pop
	33,100.0	31,300.0	30,100.0	28,800.0	R	General Fund

Parenthesis ( ) indicate expenditure decreases. ** R = recurring; NR = non-recurring

TRD will report significant impact. It will also indicate that it would be difficult and costly to implement the provisions of this act by July 1, 2017.

SOURCES OF INFORMATION
LFC Files

Responses Received From

New Mexico Municipal League (NMML)
New Mexico Finance Authority (NMFA)

SUMMARY

Synopsis of Bill

Senate Bill 451 reduces or repeals both food and medical hold harmless payments to local governments that have enacted any hold harmless gross receipts tax. The legislation would permit a county or municipal council the opportunity to repeal an implementing ordinance and qualify for a restored amount of hold harmless distribution.
The reductions for enactors can be significant on a jurisdiction-by-jurisdiction basis. Any enacting county with over 48,000 population or enacting municipality with over 10,000 population would lose all of their food and medical hold harmless distributions. Any enacting county with under 48,000 population or enacting municipality with under 10,000 population would move from a protected 100% distribution to a phased-down distribution that would zero out after 2029.

A controversial provision is that any local jurisdiction has bonded the hold harmless payments, then that jurisdiction would be required to pledge another source of unentailed revenue for bond payments.

The effective date of this bill is July 1, 2017 (although local governments might not be able to repeal any ordinance imposing a municipal or county hold harmless local option gross receipts tax and notify TRD with the required 90 days notice. And TRD may not be able to implement these provisions of this act before July 1, 2017. For both these reasons, the LFC recommends delaying the effective date until January 1, 2018.

FISCAL IMPLICATIONS

Code	Population	Jurisdiction	Enactor	Food Hold Harmless	Med Hold Harmless	Fiscal Impact
2002	662,564	Bernalillo County	Bernalillo County	$6,596,700	$2,232,300	-$8,829,000
4004	65,645	Chaves County	Chaves County	$406,600	$302,000	-$708,600
33033	27,213	Cibola County	Cibola County	$146,000	$5,200	-$27,216
9009	13,750	Colfax County	Colfax County	$42,100	$8,100	-$9,036
5005	48,376	Curry County	Curry County	$287,700	$119,900	-$407,600
27027	2,022	De Baca County	DeBaca County	$11,000	$0	-$1,980
7007	209,233	Dona Ana County	Dona Ana County	$1,152,400	$367,200	-$1,519,600
3003	53,829	Eddy County	Eddy County	$206,700	$118,200	-$324,900
8008	29,514	Grant County	Grant County	$237,900	$52,600	-$52,290
31031	695	Harding County	Harding County	$1,000	$0	-$180
19019	20,095	Luna County	Luna County	$168,000	$29,100	-$35,478
30030	4,881	Mora County	Mora County	$11,300	$200	-$2,070
15015	63,797	Otero County	Otero County	$261,500	$67,100	-$328,600
11011	19,846	Roosevelt County	Roosevelt County	$278,300	$13,100	-$52,452
16016	130,044	San Juan County	San Juan County	$1,712,500	$550,600	-$2,263,100
12012	29,393	San Miguel County	San Miguel County	$222,700	$41,200	-$47,502
1001	144,170	Santa Fe County	Santa Fe County	$2,487,200	$565,800	-$3,053,000
21021	11,988	Sierra County	Sierra County	$150,100	$12,100	-$29,196
14014	76,569	Valencia County	Valencia County	$453,600	$70,100	-$523,700
		County Total				-$18,215,500
3205	11301	Artesia	Artesia	$846,540	$116,350	-$962,890
29504	8329	Corrales	Corrales (52)	$0	$9,720	-$1,750
29311	731	Cuba	Cuba	$114,420	$0	-$20,596
17215	10224	Espanola	Espanola (part)	$635,110	$61,950	-$697,060
16121	45877	Farmington	Farmington	$3,641,110	$1,555,870	-$5,196,980
27104	1031	Ft Sumner	Fort Sumner	$59,210	$0	-$10,658
7105	97618	Las Cruces	Las Cruces	$6,099,770	$1,376,720	-$7,476,490
6405	11009	Lovington	Lovington	$380,990	$9,760	-$390,750
28130	289	Reserve	Reserve	$16,930	$0	-$3,047
9301	1047	Springer	Springer	$28,770	$1,090	-$5,375
7416	14106	Sunland Park	Sunland Park	$70,550	$3,290	-$73,840
		Municipal Total				-$14,839,435

Although the food and medical hold harmless distributions are not considered tax expenditures, the bill generates general fund revenue, while decreasing gross receipts tax revenues for certain jurisdictions. Thus, the provisions of this bill may be supportive of the LFC tax policy principle of adequacy, efficiency, and equity. Due to the increasing cost of tax expenditures, revenues may be insufficient to cover growing recurring appropriations.

Because of the phase-down, the fiscal impact decreases each year for both classes of counties and municipalities.

SIGNIFICANT ISSUES

NMFA reminds the legislature of certain provisions in the Constitution and Statute that, in effect, prohibits changing any pledged revenue source relating to bond covenants:

> "Article I, Section 10 of the United States Constitution and Article II, Section 19 of the State Constitution prohibit the passage of laws by the State that impair obligations of a party to an existing contract."
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> "The language in SB 451 raises substantial issues related to whether the legislation would be held by a court to be a violation of the non-impairment statutory provisions in the NMFA Act, the Tax Administration Act or the prohibition in the United States and State Constitution of the impairment of obligations under existing contracts, or each of them, thus giving rise to potential bondholder litigation claims. The existence of those legal issues would have a substantial impact on the NMFA's bond rating, and ability to issue NMFA's PPRF Bonds in the form of higher interest rates due to a market perception that the New Mexico Legislature has impaired NMFA's obligations to its bond holders."
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> "The New Mexico Finance Authority Act, in Section 6-21-18, contains a pledge made by the legislature on behalf of the State to holders of PPRF bonds issued by the NMFA that states: "
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> "***The state does hereby pledge to and agree with the holders of any bonds or notes issued under the New Mexico Finance Authority Act that the state will not limit or alter the rights hereby vested in the authority to fulfill the terms of any agreements made with the holders thereof or in any way impair the rights and agreements made with the holders thereof or in any way impair the rights and remedies of those holders until the bonds or notes together with the interest thereon, with interest on any unpaid installments or interest, and all costs and expenses in connection with any action or proceedings by or on behalf of those holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state in any agreement with the holders of the bonds or notes. (Emphasis added)."***
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> "Pursuant to the provision cited above, the NMFA has included the authorized non-impairment agreement in Section 4.11 of its Master Indenture of Trust and Pledge ("Master Indenture") applicable to all of its PPRF Bonds. Thus, the statutory non-impairment provision has become a contract between the NMFA and its bondholders."
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> "Furthermore, Sections 7-19D-18 (municipalities) and 7-20E-28 (counties) contain near identical provisions regarding impairment. 7-19D-18(D) states: "***Any law that imposes or authorizes the imposition of a municipal hold harmless gross receipts tax or that affects the municipal hold harmless gross receipts tax, or any law or supplemental thereto or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any outstanding revenue bonds that may be secured by a pledge of such municipal hold harmless gross receipts tax unless such outstanding revenue bonds have been discharged in full or provision has been fully made therefore.***" (Emphasis added).

> Section 7-20E-28 is identical with the exception of referring to a "county" as opposed to a "municipality."
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> "Additionally, the requirements in SB 451 to "substitute the revenue with other legally available revenue of the municipality that has not been pledged to any other debt" does not take into consideration various approvals and consents that will be required under the Master Indenture. Removing a revenue stream will require bondholder consent, Trustee consent and Rating Agency consent. The time required to obtain these approvals will likely be several months. Furthermore, the Finance Authority will, at a minimum, require that the additional revenue stream hold at least the same credit rating as that being removed, and in many cases, municipalities and counties may not have capacity to pledge alternative revenue streams to supplant the lost food and medical hold harmless distributions, and in more extreme cases, may not even have an available revenue stream to consider. In these cases, SB 451 would be forcing the municipalities and counties that do not have additional resources to not only request a pledge of a revenue source which immediately causes a technical or actual default, but would not meet the stringent requirements of the Finance Authority, bondholders, rating agencies, or the Trustee."
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> "SB 451 removes language that addresses municipalities and counties that have enacted a hold harmless gross receipts tax, leaving no guidance as to how those entities are affected. Current law permits entities that have imposed a gross receipts tax through ordinance to receive distributions through 2029; SB 451 is silent on this issue, thus the NMFA is unable to completely analyze how loans secured by a pledge of those ordinance imposed gross receipts taxes are affected."

PERFORMANCE ISSUES

NMFA continues its discussion:

> "In the PPRF, NMFA currently has 110 GRT loans outstanding to municipalities totaling over \$230 million; 59 GRT loans outstanding to counties totaling over \$163 million; and 7 GRT loans outstanding to other JPA entities totaling over \$33 million. It is possible that all 176 outstanding PPRF GRT loan agreements would need to be amended if SB 451 is passed into law. Amending 176 PPRF loan agreements would place a significant administrative burden on NMFA, its counsel, and its borrowers. It is also unrealistic that the 176 PPRF loan agreements could be amended successfully prior to July 1, 2017."
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> "It is also unrealistic that all of the required consents, assuming those consents are obtained within the framework discussed above, can be obtained from each bondholder, the rating agencies, and the Trustee within that time frame."

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 451 relates to SB 457, which also adjusts hold harmless distributions. SB-343 and SB-496 also have proposed changes in the hold harmless provisions. In the case of these other bills, however, the bond covenants are preserved.

OTHER SUBSTANTIVE ISSUES

The NMML is opposed to this bill for the following reasons:

> "This legislation will result in significant loss of revenue to local governments that have imposed any portion of the Hold Harmless Local Option Gross Receipts Tax. In the event that local governments have issued bonds pledging the Hold Harmless Distribution as the source for repayment the local government will be further negatively impacted by being required to pledge alternative revenue source(s) to repay the debt."
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> "The State of New Mexico will, if this legislation is enacted, not be required to make hold harmless distributions to local governments that have imposed any portion of the Hold Harmless Local Option Gross Receipts Tax. This will result in additional resources being available to fund the State General Fund operations."
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> "There are local governments in New Mexico that have imposed only a portion of the Hold Harmless Local Option Gross Receipts Tax and are not experiencing a "windfall" from the imposition of the tax. This legislation would potentially punish local governments for exercising the authority granted to them when the legislature passed and the governor signed the legislation that provides for the gradual take back of the hold harmless distribution that was enacted when the legislature and governor decided to repeal the Gross Receipts Tax on food and certain medical services."
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> The League Statement of Municipal Policy states in part:
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> "Any shifting of tax sharing between the state and municipalities must guarantee municipalities at least the same revenue levels they derive from current tax policy."
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> Furthermore, requiring a local government to substitute an alternative source of revenue for the repayment of outstanding principal and interest due on revenue bonds issued prior to July 1, 2017 to which was pledged the proceeds of the hold harmless distribution will further impair that local government's ability to provide essential services to its citizens.

LG/al/sb