

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 and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)).

## FISCAL IMPACT REPORT

ORIGINAL DATE 1/20/22  
 SPONSOR Louis LAST UPDATED 2/15/22 HB 15/aHTRC/aSIRC  
 SHORT TITLE Tribal Gross Receipts Rates SB \_\_\_\_\_  
 ANALYST Torres

### REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY22	FY23	FY24	FY25	FY26		
	Potentially significantly positive. See Fiscal Implications.				Recurring	Tribal Governments
	See Fiscal Implications				Recurring	General Fund
	See Fiscal Implications				Recurring	General Fund (TRD administrative fee)
	See Fiscal Implications				Recurring	Counties and Municipalities

Parenthesis ( ) indicate revenue decreases

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Indeterminate but likely significant increased costs for state projects on tribal lands				Recurring	General fund – state road fund – public school capital outlay – other funds

Parenthesis ( ) indicate expenditure decreases

Relates to SB 397 of the 2021 Regular Session

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Attorney General (NMAG)  
 Indian Affairs Department (IAD)  
 Taxation and Revenue Department (TRD)  
 Department of Transportation (DOT)  
 Public School Facilities Authority (PSFA)

### SUMMARY

#### Synopsis of SIRC Amendment

The Senate Indian, Rural and Cultural Affairs Committee amendment to house bill 15 strikes the

House Taxation and Revenue committee amendments to the title, to references to Section 9-11-12.2 NMSA 1978, and the addition of “Fort Sill Apache Tribe or Navajo Nation” to those eligible for cooperative agreements. The amendment also changes the title to reflect the bill’s changes.

Synopsis of HTRC Amendment

The House Taxation and Revenue Committee amendment to House Bill 15 removes limitations on a tribe’s sales tax rate in order to qualify for cooperative agreements and a 75 percent credit against the gross receipts tax due. The amendment also adds the Fort Sill Apache Tribe and the Navajo Nation from being eligible for the cooperative agreements and qualified tax.

Synopsis of Original Bill

House Bill 15 requires tribes, pueblos, and nations to impose a tax greater than or equal to the total gross receipts tax rate imposed by localities and the state within tribal boundaries to receive a 75 percent tax credit against gross receipts tax due to the state. Currently, only tribes with a tax less than or equal to the total gross receipts tax rate receive a 75 percent tax credit against the gross receipts due to the state.

The effective date of this bill is July 1, 2022.

**FISCAL IMPLICATIONS**

In a previous FIR analysis, TRD comments:

The legislation would require that tribal gross receipts tax rates be equal to or greater than the rates that border their boundaries. Currently, the tribal GRT rates must be at or below these rates. The ability to raise rates in excess of their current limits may result in tribes increasing their gross receipts tax rates and may result in an increase in tribal tax revenue collections.

The change proposed in this bill would allow Indian jurisdictions to impose gross receipts tax rates applicable throughout their boundaries in excess of the amounts currently allowed. These amounts are currently limited by other laws, including Section 7-19D-9 and 7-20E-9 NMSA 1978. Even if an Indian jurisdiction stayed within these limits applicable to municipalities and counties, the credits would not increase. “The amount of credit shall be equal to the *lesser* of seventy-five percent of the tax imposed by the tribe on the receipts from the transaction or seventy-five percent of the revenue produced by the sum of the gross receipts tax rates on the receipts from the same transaction.” The 25 percent credit against the tribal tax is worded similarly – “the *lesser* of 25 percent of the tax imposed by the tribe ... or 25 percent of the tax revenue produced ... by rates imposed on the receipts from the same transaction.”

Any increase in rates for the tribal tax would limit the credit amounts to the lower amount – effectively the state rate plus the county remainder rate. Thus, the rate in excess of the state plus county rate would result in 100 percent of the additional revenue distributed to the imposing jurisdiction.

Increasing tribal sales tax rates will increase the costs of state projects on tribal lands. State construction on tribal lands would be subject to the increased rates and will result in a transfer of

funds from the state to the relevant tribe. Similarly, the cost of such projects will increase proportional to the amount tribes increase their rates. Projects most likely to be impacted include road projects and public school-related construction.

## **SIGNIFICANT ISSUES**

The Public School Facilities Authority adds:

PSFA has relied on the New Mexico Attorney General Opinion No. 03-03 which concluded that Indian tribes, pueblos and nations (collectively referred to as "tribes") do not have authority to impose taxes on contractors performing work for the State of New Mexico on the tribes' reservations.<sup>1</sup> (See attached). In 2014, the PSCOC through the PSFA obtained a legal opinion which also relied on the New Mexico Attorney General Opinion No. 03-03 and two United States Supreme Court cases confirming in that particular instance that the Zuni Pueblo may not tax the PSFA, PSCOC, the Zuni Public School District, or their contractors for work performed to the Zuni Public School. (See attached). Consequently, the PSFA, PSCOC have not paid taxes to tribes for state funded school construction projects on tribal lands.

The Indian Affairs Department notes:

The New Mexico Taxation and Revenue Department (NMTRD) is authorized to enter into cooperative agreements with pueblos and tribes to collect tribal gross receipts taxes on transactions on tribal lands and remit the collected taxes to the tribal governments. According to the current tax law, Section 7-9-88.1(B)(3) NMSA 1978, qualifying gross receipts, sales or similar taxes levied by tribes on taxable transactions must not be greater than the total of the gross receipts tax rate and local option gross receipts tax rates imposed by the state and its political subdivisions located within the exterior boundaries of the tribe.

There are instances where the exterior boundary of a tribe extends across multiple counties. Under the current law, arbitrary taxing rates for pueblos and tribes will occur because of the tribes exterior boundary covering several counties.

Tribal governments have the inherent authority to decide their taxation rate. Like any other government, tribes may adjust their gross receipts tax rate. When tribes increase their gross receipts tax so it is more than the state and its political subdivisions located within the exterior boundaries of the tribes, NMTRD is unable to collect the full amount of the tribal gross receipts taxes because of the definition of a qualifying tax in New Mexico law. Tribes are limited to collecting the same amount of gross receipts taxes that the neighboring counties and local governments are collecting. Therefore, tribes are not able to collect the full amount of tribal gross receipts taxes under the current New Mexico law.

In a previous FIR, TRD commented:

The legislation would permit tribes to increase their gross receipts tax rates with no known limit to the rate. This would provide more flexibility for tribal governments to increase their rates and may better allow them to fund their desired level of governmental

---

<sup>1</sup> The New Mexico Attorney Opinion 03-03 based its opinion on the assumption that the contractors on which the Navajo Nation and other tribes for which they were attempting to impose a tax were not members of the tribes.

services.

The legislation may result in tribal governments whose tribal GRT rates are currently lower than the surrounding state and local rates raising their GRT rates to meet the new requirement to be at a rate no less than the surrounding jurisdictions. This may result in the rate being increased above the level a tribal government believes is optimal for revenue collection and a fair rate. The bill could be amended to unbind a tribal government's GRT rate from the rates that border their boundaries and allow tribes to set the rate at whatever level they deem to be desirable.

The current maximum gross receipts tax rate for adopting Indian jurisdictions is generally limited to the remainder of county rate which is lower than municipal rates typical of governments that provide similar services. Municipalities are allowed significantly higher gross receipts tax rates and this bill would allow tribes, pueblos, and nations higher rates.

The provisions of this bill, however, would not result in the state, county, or, if applicable, municipality sharing transactions with a sovereign tribal government. In long-established practice, 25 percent of the revenue derived from a tribal tax rate in excess of the combined state plus local option rate is distributed to the state and local governments and 75 percent of the revenue derived is distributed to the tribal government. The preponderance of interpretation is that 100 percent of the revenue derived from the excess rate would be distributed to the sovereign tribal government.

Requiring jurisdictions to have a greater or equal rate could create a disincentive that would discourage new businesses to relocate into those areas or provide incentives for existing businesses operating within those tribal boundaries to relocate outside the tribal jurisdiction.

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Tribal governments would continue to be required to have tax rates lower or equal to the combined local and state rate.

IT/acv/al