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FISCAL IMPACT REPORT

SPONSOR <u>Jaramillo</u>	LAST UPDATED <u>2/1/23</u>
SHORT TITLE <u>Regional Transit GRT Distributions</u>	ORIGINAL DATE <u>1/21/23</u>
	BILL
	NUMBER <u>Senate Bill 37</u>
	ANALYST <u>Graeser</u>

REVENUE* (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25	FY26	FY27		
	18,300.0	37,500.0	38,800.0	39,600.0	Recurring	Rio Metro Regional Transit
	4,100.0	8,400.0	8,700.0	8,900.0	Recurring	North Central Regional Transit
	(18,300.0)	(37,500.0)	(38,800.0)	(39,600.0)	Recurring	Bern Co, Sandoval Co, Valencia Co
	(4,100.0)	(8,400.0)	(8,700.0)	(8,900.0)	Recurring	Rio Arriba Co, Santa Fe Co, Taos Co

Parenthesis () indicate revenue decreases.

*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
\$1,498.5	--	--	\$1,498.5	Nonrecurring	ITD – Contractual Services
\$115.5	--	--	\$115.5	Nonrecurring	ITD – Staff Workload
--	\$173.3	\$173.3	\$346.6	Recurring	ITD – FTE
--	\$8.3	--	\$8.3	Nonrecurring	ASD – Staff Workload

Parenthesis () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files
Agency Analysis of Senate Bill 30 from 2022

Responses Received From
Taxation and Revenue Department (TRD)
New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of Senate Bill 37

Senate Bill 37 provides that revenue from a county regional transit gross receipts tax will be distributed directly to the regional transit district rather than transferred from the applicable county, and then transferred from the county to the district.

The bill extends the limited protections of Section 7-1-6.15 NMSA 1978 to the newly authorized county regional transit district gross receipts tax transfers and adjustments of these distributions pursuant to that section.

This bill also amends Section 7-1.6.41 NMSA 1978 relating to distribution of administrative fees to the general fund. This mainly repeals obsolete provisions that imposed an additional administrative fee to fund the 2000-2002 reconstruction of the department’s information systems. The redraft uses the phrase, “may charge a 3 percent administrative fee” for distributions of local option taxes to counties, municipalities, and county regional transit districts. Current law directs TRD to impose a 3 percent administrative fee on amounts distributed to local public bodies. The redraft may allow the department some discretion in the imposition of this administrative fee, but the authorizing statutes are clear the department will impose these fees on distributions.

The effective date of this bill is January 1, 2024. TRD notes that this effective date may be difficult for the agency to achieve. (See Administrative Impacts section for discussion.)

FISCAL IMPLICATIONS

There are two regional transit systems currently operating in the state: (1) Rio Metro Transit District operating in Bernalillo, Sandoval and Valencia Counties; and (2) North Central Transit District operating in Rio Arriba, Santa Fe and Taos Counties.

The estimate uses the county regional transit district revenue distributed by TRD to counties and applies the gross receipts tax (GRT) growth rates from the Consensus Estimating Group (CREG) December 2022 general fund forecast. Counties would no longer receive these revenues and then distribute them to regional transit districts, so their revenues and appropriations would both decrease in an offsetting manner. Regional transit districts would receive the same amount of incoming revenue directly from TRD rather than from a county.

As pointed out below, the provision to change the administrative fees from “shall” to “may” causes some confusion. It is not certain that TRD would stop collecting administrative fees from the counties and municipalities. The potential consequences, however, can be shown by exhibiting the actual amount of the fees transferred to the general fund for FY22.

Total Admin Fees	FY22	FY23 Est
Counties Distributions	\$822,084,228	\$983,059,958
County Admin Fee	(\$23,419,328)	(\$29,931,507)
	2.85%	3.04%
Munis Distributions	\$1,495,259,001	\$1,664,866,982
Muni Admin Fee	(\$26,445,441)	(\$29,608,476)
	1.77%	1.78%

SIGNIFICANT ISSUES

TRD notes the following significant issues:

Currently, all county local option gross receipts tax revenues are distributed by TRD to counties pursuant to Section 7-1-6.13 NMSA 1978; counties then distribute county regional transit gross receipts tax revenues to regional transit districts pursuant to Section

7-20E-23(D) NMSA 1978. The legislation removes the county passthrough and instead TRD would distribute county regional transit districts taxes directly to regional transit districts. The funds must be used in the same manner as under current statute, as the revenues derived from the tax are pledged to the regional transit district requesting the imposition of the tax in the ordinances adopting the tax.

This bill would be highly complex for TRD to implement, and the bill contains no appropriation to offset TRD's costs (see Administrative & Compliance Impacts below). If regional transit districts are having problems timely or accurately receiving transfers from counties (which TRD has not confirmed), TRD suggests that counties and regional transit districts work together to ensure smooth transfer of funds rather than impose implementation costs and system risks upon the State.

The administrative fees TRD subtracts from amounts it distributes to local public bodies is currently set by the legislature in statute, not at the discretion of TRD. It is unclear why the authority to set that fee would be at the discretion of TRD rather than set in statute.

New Mexico one of the majority of States that use the GenTax system as its tax system of record. FAST, the vendor that provides GenTax, reports to TRD that New Mexico's revenue distribution system is inordinately complex amongst the States. This bill would push New Mexico further down the path of abnormal complexity in revenue distributions. The more complex TRD's distributions, the more prone to error, the more inefficient TRD's operations, and the more costly it is to implement routine changes.

Currently, Section 7-1-6.41 requires TRD to collect an administrative fee on amounts distributed to local government and political subdivisions, and that fee is set by the legislature. This bill would replace the legislature's authority to set the fee amount with TRD having discretion to set a fee. It is unclear why it is proposed for that authority to be shifted from the legislature to an executive agency.

PERFORMANCE IMPLICATIONS

This bill does not propose a GRT tax expenditure. No performance implications are involved.

ADMINISTRATIVE IMPLICATIONS

TRD notes a significant unfunded implementation cost:

The legislation will have a high impact on the Information and Technology Division (ITD) of TRD, with approximately 6 months of effort and \$1.6 million (\$115.5 thousand of staff workload costs and \$1.5 million of contractual resources including gross receipts tax). The legislation requires system configuration updates for local option GRT distributions, updates to reports, the accounting systems, and implementation of an administrative fee. Contractual services include a main contract with the GenTax vendor, a contract project manager, and independent verification and validation (IV&V).

After implementation is completed, one application developer, one business analyst and one database/system administrator FTE will be necessary for ongoing operations and support; the more the system is upgraded, the more it needs support.

The Administrative and Services Division (ASD) of TRD estimates that implementation of the legislation will take approximately 140 staff workload hours at a cost of \$8.3 thousand related to system changes.

The bill has an effective date of January 1, 2024, meaning that most implementation costs will be incurred in FY2023. TRD implements twice a year GRT and compensating tax rate changes occurring every July 1 and January 1. If several bills with similar or earlier effective dates become law, there will be a greater impact to TRD and additional staff workload costs or contract resources may be needed to complete the changes specified by the effective date(s) of each bill.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill was introduced last year (2022 Regular Session as SB 30 and in the 2021 Regular Session as SB372).

TECHNICAL ISSUES

TRD and LFC staff are somewhat concerned about the change in Section 7-1-6.41 NMSA 1978 from “shall” to “may” in the authority to impose a 3 percent administrative fee on distributions of local option gross receipts taxes. This revenue is distributed to the general fund. TRD recommends that the “may” language be restored to “shall”.

In addition, TRD has the following concern:

[Section 6]: Subsection D on page 19 references prior to January 1, 2023 for counties to distribute revenues for the final time. It appears that the intent was to reference January 1, 2024 as on page 20, the bill specifies after January 1, 2024, the revenue would be distributed by TRD directly to regional transit districts. Additionally, the cut-off of January 1, 2024 will mean that revenue accrued to November 2023 will be directly distributed by TRD to the regional transportation districts. This would mean 8 months of revenue would be impacted in FY2024. This revenue would also be from months prior to the proposed effective date of the legislation, January 1, 2024. If the intention is to distribute 6 months of revenue from FY2024 and align to January 2024, associated business revenue, then TRD proposes updating the language to have an effective date of March 1, 2024 or to state that the January 1, 2024 effective date refers to revenue accrued as of January 1, 2024.

Parts of the bill refer to the “regional transit gross receipts tax”. The tax is denominated by Section 7-20E-23(A) NMSA 1978 as the “county regional transit gross receipts tax”, and TRD recommends conforming the terms for consistency and to avoid confusion.

[Section 3]: This section removes compensating taxes from 7-1-6.15. Governmental Accounting Standards Board (GASB) 84 requires state governments to distinguish between their own and fiduciary monies. Local option compensating taxes are local sourced revenue and are fiduciary funds of the local government. Removing adjustments to local option compensating taxes from 7-1-6.15 would mean state-sourced revenues, which are not fiduciary, would have to be used to essentially reimburse a local government for adjustments. Ideally, fiduciary and state revenues would be maintained separately. Even though legacy tax programs have prevented a complete separation,

TRD does not recommend going back and co-mingling the revenues.

OTHER SUBSTANTIVE ISSUES

Administrative fees imposed on counties and municipalities have shifted significantly over the state's history. The actual costs of administering the very complex gross receipts tax are difficult to determine. Currently, through ratioing the total budget of TRD by distribution entity it is estimated that an administrative fee of about 1.5 percent, without the statutory reductions for municipalities, might be close to cost.

Historically, under the Bureau of Revenue, each tax was administered by an office funded typically with a 5 percent administrative fee, with any excess over the cost of actual administration reverting to the recipients. When TRD was created in 1978, the administrative fee imposed on county and municipal GRT distributions was set at a maximum of 3 percent, with the proviso that TRD should periodically calculate the actual cost of collecting and distributing this tax. On several occasions prior to 1990-91, the administrative fee rate was set at 1.7 percent for counties and about 1 percent for municipalities. In 1990-91, the full 3 percent for municipalities and effectively about 1.7 percent for municipalities was required in HB2. Beginning in about 2013 and persisting until 2020, HB2 required TRD to collect an additional 0.25 percent administrative fee appropriated to the Department to fund enhanced audit efforts.

On last year's SB30, TRD pointed out why the administrative task is difficult:

The complexity of the administrative task is explained because, for example, the North Central Regional Transit Authority has GRT funding from Rio Arriba, Santa Fe, Taos, and Los Alamos Counties. The Rio Metro regional transit district has GRT funding from Bernalillo, Sandoval, and Valencia Counties. The multi-county funding with a single new distribution entity is a new concept that will have to be built into the system.

ALTERNATIVES

On last year's SB30, TRD suggested that multi-county cooperation might be preferable to adding complexity to the already significantly complicated GenTax GRT processing system.

“This bill would be highly complex for TRD to implement, and the bill contains no appropriation to offset TRD's costs. If regional transit districts are having problems timely or accurately receiving transfers from counties, TRD suggests that counties and regional transit districts work together to ensure smooth transfer of funds rather than impose implementation costs on a state agency.”

Separating the administrative fee change from “shall” to “may” from the other administrative provisions of this bill might be appropriate. Reverting to an administrative fee equitable between counties and municipalities and making the equitable fee represent the actual cost of administration would make the “administrative fee” into a fee based on the cost of service rather than on county and municipal distributions.

LG/mg/ne/al