

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Woods</u>	<b>LAST UPDATED</b> <u>3/6/23</u>	<b>ORIGINAL DATE</b> <u>2/3/23</u>
<b>SHORT TITLE</b> <u>GRT Distribution To Certain Entities</u>	<b>BILL NUMBER</b> <u>Senate Bill 66/aSTBTC</u>	<b>ANALYST</b> <u>Graeser</u>

Note: this bill does not have an appropriation. The required money transfer is accomplished as a distribution from the Tax Administration Account.

### REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25	FY26	FY27		
		(\$65.0) to (\$205.0)**	(\$65.0) to (\$205.0)**	(\$65.0) to (\$205.0)**	Recurring	General Fund
		\$65.0	\$65.0	\$65.0	Recurring	Cibola County
		0.0 to \$140.0	0.0 to \$140.0	0.0 to \$140.0	Recurring	Property Tax beneficiaries

Parenthesis ( ) indicate revenue decreases.

\*\* Calculated only for the Lower L-Bar Ranch property in Cibola County. Other purchases are speculative.

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

FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	\$1,000.0	--	\$1,000.0	Nonrecurring	TRD – ITD Contractual Services for implementation
	\$5.5	\$5.5	\$11.0	Recurring	TRD – ITD annual Staff work hours
	\$8.2	--	\$8.2	Nonrecurring	TRD – ASD initial staff workload for implementation
	\$2.7	\$2.7	\$5.4	Recurring	TRD – ASD annual staff work hours

Parenthesis ( ) indicate expenditure decreases.

#### Sources of Information

LFC Files  
LFC FIR for 2022 SB186

#### Responses Received From

Taxation and Revenue Department (TRD)  
Department of Finance and Administration/Local Government Division (DFA/LGD)

## SUMMARY

### Synopsis of STBTC amendment

STBTC amendment to SB66 changes the required distribution pursuant to 7-1-6.1 NMSA from

annual to monthly. The amendment did not clarify the other issues identified by TRD, DFA/LGD, or LFC.

## Synopsis of Senate Bill 66

Senate Bill 66 proposes an annual distribution from the tax administration account when the state purchases land in fee simple. The amount of this distribution would be calculated based on the assessed value of the property acquired multiplied by the then current property tax rate imposed by the jurisdiction.

It is not clear if other political subdivisions such as school districts, higher education institutions, and special districts would be included in the calculation of this payment-in-lieu-of-taxes (PILOT or PILT). It is also not clear if these other jurisdictions would receive a separate distribution or whether the entire amount of the PILT would be received by the affected county jurisdiction. Land purchased by the Department of Transportation would be exempt from this PILT. Acquired land would be assessed as non-residential property, apparently even if the property were partially or wholly residential.

Unlike last year's SB186, this bill does not require an appropriation. The transfer of funds is accomplished as an annual distribution from the Tax Administration Account. This is similar in effect to a continuing appropriation, but is technically a distribution of funds that are exempt from the constitutional requirement that the state may not expend funds without an appropriation of those funds by the Legislature.

The effective date of this bill is January 1, 2024.

## FISCAL IMPLICATIONS

The provisions of this bill are unusual. The purpose of this bill is to reimburse local governments for lost property taxes when the state acquires land from private entities for general state use. Whether these payments constitute a tax expenditure could be debatable. But the earmarking of revenues narrows the ability of the Legislature to adjust appropriations to available revenues.

The provisions of this bill were apparently triggered by the ongoing acquisition by the Department of Game and Fish of the L Bar Ranch – 52,870 acres of privately owned land near Mt. Taylor. The department purchased the Upper L Bar Ranch (17.7 thousand acres) for \$12.45 million in March 2022 and is buying the Lower L Bar Ranch (36.5 thousand acres) for \$21.66 million over a planned five years. Once acquired by the state game commission, the property became part of the Marquez Wildlife Management Area (WMA), allowing for public access that was previously unavailable. More than half the property lies within the Mt. Taylor Traditional Cultural Property, which is on the New Mexico Register of Historic Places and holds cultural significance for more than two dozen Native American tribes, who did not have access to the land that is privately owned. Acquisition by the state game commission permanently protects an area's cultural/archeological sites and wildlife habitat. The Marquez WMA is primarily a big game habitat and hunting area. All big game hunting licenses on WMAs are reserved for New Mexico residents, so the acquisition expanded hunting opportunities, outdoor recreation, and education for New Mexicans.

We assume: (1) the 17.7 thousand acre Upper L Bar Ranch will not be eligible for this PILT

treatment since it was purchased before the effective date of the act; (2) the Lower L Bar Ranch is fully in the Grants-Cibola School District totally within Cibola County; and (3) the purchase will not occur before the July 1, 2024 effective date, so will be fully subject to the PILT.

Because these assumptions are largely uncertain, the fiscal estimate is also uncertain. If other state purchases become subject to this PILT requirement, then the fiscal impact, which is recurring for each project, could become significant for the general fund.

The range of impact shown in the table represents the uncertainty as to whether only the county levy would receive the PILT or all of the property tax beneficiaries as well.

In comparison, the 2020 property taxes on L Bar Ranch, when it was privately owned, were approximately \$11.2 thousand, since the property likely had an agricultural valuation. In 2020, the property was purchased by the Trust for Public Lands and property taxes became zero.

TRD comments:

...TRD assumes for the fiscal impact that properties acquired by the State beginning January 1, 2024, the effective date of this bill, would be subject to the distribution criteria. That criteria would then set a distribution amount the calendar year following state acquisition, and therefore a potential negative impact on the general fund revenues would begin in FY25.

The scope of the revenue impact is unknown as it depends on the number of actual private property sales to the state, the appraisal values and their associated taxable values, the location of the properties and the associated property tax rate, all of which cannot be predicted.

## SIGNIFICANT ISSUES

TRD discusses the policy implications of the bill's provisions:

The bill appears to be trying to alleviate a political subdivision's loss of property tax base and property tax revenue by supplementing that revenue with state GRT general fund revenue. From a tax policy and revenue perspective, the bill is interlacing two separately defined tax bases -- property tax and gross receipts tax -- by interchanging revenue. Administratively, the bill is also interchanging the role of county governments who collect property tax revenue with TRD who collects gross receipts tax revenue but would be charged with a proxy property tax distribution.

The potential negative fiscal impact to the general fund would continue to accumulate as properties are added to the list. These revenue distributions would be disassociated with the economic growth and decline of the state GRT tax base. So that in economic downturns, this distribution would potentially take a larger percentage of the state GRT general fund if property values remain the same. Unlike other annual distributions such as the county equalization distribution, the distribution is not tied to the economic fluctuations in the GRT tax base.

Finally, the bill only accounts for one action that impacts property tax revenues for all property tax recipients – when the State acquires property. The bill does not take into account properties that the state sells and move from state-owned to privately owned

whereby the property taxing entities would see an increase in its property tax base. If the two revenues of property tax and GRT are to be interlaced, then all transactions going in either direction should be considered in distributions.

Similarly, the bill does not take into account the removal of real property from the property tax base resulting from county and municipal issuance of Industrial Revenue Bonds (IRB). IRB temporarily reduce the property tax base for all taxing entities due to a county or municipality temporarily owning the financed facility and leasing it back to the developer. IRBs also decrease State and local GRT collections by exempting equipment acquired through IRB projects from GRT. Without addressing IRBs and sales of State property that put property back onto property tax rolls is arbitrary.

## ADMINISTRATIVE IMPLICATIONS

TRD notes a substantial and largely uncertain administrative impact:

Under the current bill language, it is unclear how to calculate an administrative impact. GenTax, the tax system of record, does not have the information necessary to calculate this distribution annually. Property tax information is not maintained in GenTax. There is potential for a large administrative burden to build up on TRD as properties that meet the criteria form an annual list that must be quantified, tracked and then distributed annually to numerous local governments beneficiaries in perpetuity.

TRD's Information Technology Division (ITD) and Administrative Services Division (ASD) would be the lead divisions to implement the bill. This legislation will impact general ledger and revenue accounting and reporting and require unknown modification to GenTax. Cost estimates are difficult to make because business requirements are unknown at this time. TRD assumes a minimum ITD impact of \$1 million to acquire contractual services to initially implement the structure for the distributions and commit staff workload hours annually as new distributions are added. ASD will commit initially a minimum of 120 hours split between 2 staff members, to define system requirement and to test the new distributions and reporting then have recurring staff workload costs to test new distributions.

## TECHNICAL ISSUES

LFC staff have a number of administrative and drafting concerns:

Section 1 of the bill and the title assert that this is a distribution of gross receipts tax. That declaration does not adequately or accurately reflect the bill's provisions. The distributions required by the bill have nothing to do with the Gross Receipts Tax. Quoting Section 7-1-6.1 NMSA 1978 is the distribution section for all taxes administered through the provision of the Tax Administration Act.

~~Section 7-1-6.1 NMSA 1978 is an instruction to distribute taxes and fees from the Tax Administration Account monthly. The provision of this bill requires an annual distribution of an amount equal to the property tax that would be paid to the jurisdiction if the property remained in private hands. It might be preferable to do this distribution as 1/12<sup>th</sup> of the annual property taxes that would be collected based on the tax rate specific to the government jurisdiction, exclusive of any amounts of property tax that would be collected for schools, higher education institutions, or special districts. This issue has been addressed by the STBTC amendment.~~

As noted in the Significant Issues section, the purpose of this bill may have been triggered by the ongoing acquisition by the game commission of the L-Bar Ranch. The language of this bill may not prevent the affected county from pursuing a claim for PILT pursuant to the provisions of this act based on the total purchase price of \$34 million, not just whatever portion of the overall purchase is consummated after January 1, 2024. If Cibola County is successful in sustaining this argument, then there would be successive attempts by other counties to assert a PILT for prior purchases by the state of private lands.

It is not clear how the PILT would be calculated. The state is not a property taxpayer since it is constitutionally exempt. Therefore, the provisions of this bill would have to be administered by the county assessor and treasurer.

TRD also notes a number of technical/legal issues:

TRD has reviewed the constitutionality of this proposal as a tax on state-owned lands. TRD's legal assessment is that it is likely not unconstitutional as the distribution is coming out of gross receipts tax collected and held in suspense. The suspense fund does not include property taxes. Therefore, the distribution would not be from imposing a property tax on state-owned lands. The amount of the distribution may be calculated by referring to property tax, much like a definition, but that itself does not impose a property tax on real property of the State.

Generally, gross receipts tax (GRT) distributions are return based and occur monthly, but this would be an annual distribution based on property values that would not show up on a GRT return. This would alter the logic of basing a distribution for GRT on a return to one without a return.

There is information that is needed for TRD to distribute the proposed GRT distribution which is not detailed in the bill.

- On page 1, lines 23 and 24, the bill states 'whenever the state acquires fee simple ownership of real property' a distribution is triggered. 'Fee simple ownership' is not defined nor is it clear what agency is responsible for tracking these acquisitions and reporting them to TRD. The bill needs to specify what agency or entity is to track state acquisitions.
- The bill needs to detail who is to appraise the value of the land annually. The certificate of property tax rates for each county is certified by the Department of Finance and Administration (DFA).
- The bill needs to then outline in detail the conveyance of state acquisition information and appraisal value to DFA, which would then calculate the taxable value and property taxes of the real property.
- The detail of the transfer of information needs to include dates as to when information need to be conveyed. Then the bill would detail how the information is transmitted from DFA to TRD as to the exact amount of the property tax value and legal political subdivision that receives the distribution out of GRT.
- From the effective date, it is not clear if the bill is written to have the first annual distribution on January 1, 2024, where the amount is based on the prior year property acquisition or that properties acquired beginning January 1, 2024 would begin the distribution criteria. 'Annually' is also not defined in the bill language;

it should specify whether the year concerned is fiscal year, calendar year, or some other measurement.

Instead of a distribution out of GRT at TRD, it may follow that DFA should make annual payments to local governments from the general fund, as they own a large segment of the information needed to offset the loss of property tax revenue.

## SUGGESTED AMENDMENTS

Clarify if all of the government jurisdictions, including counties, municipalities, schools, higher education institutions, and special districts would be included in the PILT and whether each of these jurisdictions would receive a separate warrant from TRD or be included in the total amount received by the county.

Clarify if previous purchases, such as the acquisition of the L-Bar Ranch in March 2022 by Game and Fish are eligible for the PILT proposed in this bill.

~~Render the distribution in Section 7-1-6.2 NMSA 1978 as a monthly distribution of 1/12<sup>th</sup> of the annual amount.~~ Resolved by STBTC amendment.

LG/rl/ne/al