



Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

Synopsis: House Bill 477 creates an exception to any occupancy tax imposed where the person furnished lodging is a legislator who enters into a written agreement for lodgings at a taxable premises in Santa Fe County for at least thirty consecutive days during a legislative session.

#### **FISCAL IMPLICATIONS**

#### **SIGNIFICANT ISSUES**

House Bill 477 creates a significant concern of *quid pro quo* corruption. The law would require that an occupancy tax not be imposed specifically for legislators meeting the identified requirements, creating an incentive for a taxable premise (e.g., many of the hotels or other taxable accommodations in Santa Fe) to provide lodging to legislators at a lower cost than to any other residents, travelers, or individuals. In addition, to the extent a legislator is not required to pay the additional occupancy tax by virtue of their status as a legislator, it creates a potential constitutional concern under Article IV, Section 10 of the New Mexico Constitution (commonly known as the “Emoluments Clause”), which prohibits a legislator from receiving “other compensation, perquisite or allowance.” Legislators are expressly entitled to per diem expenses and mileage under the New Mexico Constitution, but creating legislation that specifically provides for a discounted taxation rate only for legislators and only in the county in which the capitol is located raises a potential concern as to whether this constitutes additional compensation, perquisite, or allowance for a legislator. The bill also raises a question under Article IV, Section 24 of the New Mexico Constitution which provides that “[t]he legislature shall not pass local or special laws in any of the following cases: regulating county, precinct or district affairs . . . the assessment or collection of taxes or extending the time of collection thereof[.]” The courts have explained “A statute relating to persons or things as a class is a general law; one relating to particular persons or things of a class is special[.]” *Scarborough v. Wooten*, 1918-NMSC-019, ¶ 4 (quotation marks omitted) (citation omitted). Further,

While a statute may be special in the sense that it is not universally applicable, we will not find that such a statute violates the constitutional prohibition simply because the legislature has chosen to confer a benefit upon or allocate a burden to less than all inhabitants of the state. As long as the statute applies to all persons whose particular circumstances, now or in the future, coincide with the particular circumstances that prompted the enactment of the statute, the statute retains its general character, and we will uphold the legislative classification.

Legislative classifications cannot be arbitrary, however, and must be based upon real differences between those to whom the statute applies and those to whom it does not. To determine whether the legislature has acted arbitrarily, we need inquire only whether there are some circumstances peculiar to the persons benefitted or burdened that make it reasonable to distinguish those persons from

the persons not so benefitted or burdened.

*Garcia v. LaFarge*, 1995-NMSC-019, ¶¶ 21–22 (overruled on other grounds by *Cahn v. Berryman*, 2018-NMSC-002). It is not clear from the bill whether there are “real differences” between a person furnished lodgings who is a legislator that has entered into a written agreement for lodgings in Santa Fe County for at least 30 consecutive days during a legislative session, versus all other persons to whom lodgings might be furnished.

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

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

## **AMENDMENTS**