

LFC Requester:	Graeser, Laird
-----------------------	-----------------------

**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply: **Date** March 9, 2015
Original **Amendment** **Bill No:** SBS669
Correction **Substitute**

Sponsor: Sen. Stuart Ingle **Agency Code:** Attorney General's Office
 LOCAL OPTION GRT **Person Writing** Roscoe A. Woods, AAG
Short DISTRIBUTION **Email**
Title: ADJUSTMENTS **Phone:** 505.827.7411 : rwoods@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Companion to: HB 581

Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

BILL SUMMARY

Synopsis:

Substitute for SB669 hereinafter (SB669) would eliminate the secretary's (TRD) current ability to cure any **erroneous transfers** or distributions of gross receipt taxes either in excess or a deficiency, to a political subdivision—municipality or county.

Rather than a determination of what constitutes an "erroneous transfer," SB669 would change the current procedure by the implementation of a definite formula as a basis for recovery or distribution—permitting cities and counties to negotiate paybacks under defined criteria and expanding the recoverable time frame from one year prior to the calendar year (12 to 23 months) to 36 to 47 months.

SB669 also enables the political subdivision to enter into a repayment agreement expressing the terms as to how TRD may recoup any recoverable amounts. However, SB669 also expands TRD power to recover any recoverable amounts regardless of an agreement, a default provision, by withholding/decreasing future distributions by the enumerated formula subject to review by the state board of finance.

SB669 would also increase the information that may be revealed to local governments and their agencies to include: taxable gross receipts paid by taxpayers from business locations attributed to that municipality provided that authorization from the IRS has been received.

FISCAL IMPLICATIONS

None for the AGO

SIGNIFICANT ISSUES

On its face, SB669 is attempting to eliminate any confusion of the meaning "erroneous" distribution. In *City of Eunice v. New Mexico Taxation and Revenue Department*, 2014-NMCA-085, (Cert. Granted, 2014-NMCERT-008), our Court of Appeals clarified the meaning of "erroneous." The Court expressed that, "the plain language of Section 7-1-6.15 is clear and contains no limitation as to any error... [t]he meaning is simple and unambiguous—the word "erroneous" describes something or someone as mistaken or incorrect." *New Mexico Taxation*

and Revenue Department, 2014-NMCA-085, ¶ 14.

The consequence of SB669, specifically the expansion of the recoverable time frame from one year to three years to recover any excess transfers would be that political subdivisions will be absorbing a greater amount of any recoverable amounts resulting from taxpayer refund requests—TRD distributes or transfers the total for the current month and notifies the local government of the recoverable amount, that TRD intends to collect it through reductions in future distributions or transfers to the local government and that the local government has 90 days to enter into a repayment agreement if the local government prefers a payment plan other than the default. The default plan is even payments over six months, beginning three months after notification.

Moreover, the expansion of one year to three years may have detrimental fiscal consequence on municipalities and counties that would have a detrimental impact on services.

In regards to revealing taxable gross receipts paid by businesses, the implementation of same may raise some proprietary issues pertaining to profit corporation(s). The Federal authorization clause may cure such issues. Perhaps the information revealed, gross receipts paid should not be identified as applicable to any individual taxpayer. The additional provisions provided in the substitute bill expressing that information is for tax purposes only and that the cities and municipalities are subject to the confidentially provisions expressed in Section 7-1-76 certainly provides a remedy and or penalty for any breaches thereof.

PERFORMANCE IMPLICATIONS

None for AGO

ADMINISTRATIVE IMPLICATIONS

None for AGO.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

SB 669 appears to be a duplicate and or companion of HB-581

TECHNICAL ISSUES

None for AGO

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

None.