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## FISCAL IMPACT REPORT

**SPONSOR** Cervantes **ORIGINAL DATE** 01/25/16  
**LAST UPDATED** 02/04/16 **HB** \_\_\_\_\_

**SHORT TITLE** Public Body Security Sales **SB** 89

**ANALYST** Amacher

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		
None	None		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to: HB 317

### SOURCES OF INFORMATION

LFC Files  
 New Mexico Finance Authority (NMFA)  
 Regulation and Licensing Department (RLD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 89, for the New Mexico Finance Authority Legislative Oversight Committee, allows public bodies to delegate authority for making certain determinations regarding sales of public securities; clarifies the definitions “public body” and “public securities”; and requires annual reporting to the New Mexico Finance Authority Legislative Oversight Committee. The effective date of this bill is July 1, 2016.

### FISCAL IMPLICATIONS

No known fiscal implications.

### SIGNIFICANT ISSUES

SB 89 proposes a new section of the Supplemental Public Securities Act setting parameters and conditions in delegating to one or more individuals with specific pricing approval authority acting in a fiduciary capacity. Delegation is specific and limited in both time and terms. Such conditions and delegation would only occur in a public meeting of the public body. This delegation would allow for bond sales to be scheduled inline with market conditions.

SB 89 proposes to expand both the definition of “public body” and “public securities”. “Public body” is currently defined as this state or any department, board, agency or instrumentality of the state, any county, city, town, village, school district, other district or educational institution or any other governmental agency or political subdivision of the state. SB 89 proposes expanding the definition of “public body” by adding the NMFA. This expansion in the definition allows the NMFA to approve the price at which public securities are sold at the time of final market pricing. Actions taken by the delegated individual or individuals must be reported by the NMFA annually to the NMFA Legislative Oversight Committee.

The public body would be required to adopt an authorizing instrument to allow delegating to one or more members, officers or employees of the public body to approve the price at which public securities are sold at the time of final market pricing of such securities. The authorizing instrument would state the purpose of the securities, par amount, term, interest, tax or revenue source pledged to secure payment for the securities, and if to be sold by public or private sale. The designated employee, officer or other members would be required to affirming writing that all parameters within the authorizing instrument would be effective for 180 days or for a specified shorter period.

“Public securities” is defined as any bonds, notes, warrants or other obligations now or hereafter authorized to be issued by any public body pursuant to the provisions of any general or special statute, any constitutionally or statutory charter or any other law. The bill proposes adding “loans” to the definition of public security.

The Regulation and Licensing Department (RLD) raised concerns that, by specifically including the term “loans” within the definition of “public securities”, the issuing public body will become subject to the terms of the New Mexico Uniform Securities Act, Section 58-13C-1, *et seq.*, NMSA 1978. However, the NMFA indicates “security” as defined in the Uniform Securities Act already includes the terms “bond” and “evidence of indebtedness”. The NMFA does not believe that adding the term “loan” to the Supplemental Public Securities Act definition of “public securities” will have this effect as, in the first instance; “bonds” are already encompassed in the Uniform Securities Act definition under the rubric of “evidence of indebtedness”. According to the NMFA, amending the definition of *public* securities issued by public bodies should not affect the definition of “securities” under the Uniform Securities Act, or the scope of the Public Securities Act. All “securities” issued by public bodies are already exempt from the registration requirements of the Uniform Securities Act (Section 58-13C-201, NMSA 1978).

NMFA points out that the addition of the term “loans” to the definition of “public securities” is likely superfluous, as the statute currently includes the blanket term “or other obligations” in the relevant definition. NMFA considers that a “loan” is an “obligation” within the current scope and meaning of the Supplemental Public Securities Act. The Municipal Code states that for the purposes of the revenue bond provisions, the term ‘bond’ means any obligation of a municipality issued under Chapter 3, Article 31 NMSA 1978, whether designated as a bond, note, loan, warrant, debenture, lease-purchase agreement or other instrument evidencing an obligation of a municipality to make payments. Section 3-31-1(D), NMSA 1978, County Revenue Bond Statute provides identical language as Section 4-62-1(R).

The New Mexico Finance Authority Act also defines a bond to mean ‘any bonds, notes, certificates or participation or other evidence of indebtedness.’ Section 6-21-3(B), NMSA 1978 also tracks accordingly with the Internal Revenue Code, which states that the term “bond” means an “obligation of a state or political subdivision.”

NMFA has noted this bill will bring the state into compliance with standard municipal market practices in the United States. RLD indicates the process by which public securities are currently issued/bought/sold may be a slow process and that this bill seeks to correct a problem of efficiency.

SB 89 is endorsed by the New Mexico Finance Authority Legislative Oversight Committee.

### **DUPLICATES**

HB 317 duplicates SB 89 in its entirety with the exception of the New Mexico Finance Authority Legislative Oversight Committee endorsement.

### **TECHNICAL ISSUES**

If the current definition of “security” and the term “evidence of indebtedness” are not deemed to include “loans”, RLD’s concern could be addressed by proposing an amendment to the definition of “security” in the Uniform Securities Act to specifically include loans.

The bill does not clearly specify the process by which a person(s) is chosen to serve as the delegated authority to carry out the proposed amendments to the current Supplemental Public Securities Act.

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

The NMFA reports the state will be out of conformance with national standards and investor expectations for how public securities are sold and sales are approved by public bodies. If SB 89 is not enacted, New Mexico public entities will continue to pay an approval risk premium on their public bond sales, public bodies will be less informed, and public bodies will operate less efficiently and effectively when undertaking the public sale of bonds. An opportunity to advance good organization and good government practices in New Mexico will be lost.

JMA/jo/jle