

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

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 03/13/17

SPONSOR Trujillo, CA LAST UPDATED \_\_\_\_\_ HB 514/HLEDCS

SHORT TITLE Enhanced Enterprise Zone Act SB \_\_\_\_\_

ANALYST Clark/Graeser

### REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19	FY20	FY21		
	Potentially positive from enhanced economic activity				Recurring	General Fund (Gross Receipts Tax)
	At fixed mill levies, would have small negative revenue effect				Recurring	GO Bond Fund

Parenthesis ( ) indicate revenue decreases. \*\* R = recurring; NR = Non-recurring

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

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	Minimal					EDD

Parenthesis ( ) indicate expenditure decreases

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Municipal League (NMML)

### SUMMARY

#### Synopsis of Bill

House Labor and Economic Development Committee Substitute for House Bill 514 creates the “Enhanced Enterprise Zone Act”, allowing a local government to designate an area as an enhanced enterprise zone. After the zone and its participants are approved, the participants are granted a property tax abatement for up to ten years. Any zone within a municipality must be ratified by the county’s board of commissioners but may only be rejected by the board “for good cause.... The abatement of increased property taxes from the improvements in the district shall not be the sole reason for the denial of the enhanced enterprise zone designation by the county.” Property owners may petition the local government to create a zone. Any individual or

corporation owning property in the zone can submit a comprehensive business plan and be included in the property tax abatement. Subsequent to the formation of the zone, an individual or corporation could submit a comprehensive business plan and be included in the zone.

The effective date of this bill is July 1, 2017.

### **FISCAL IMPLICATIONS**

Once approved by a municipality and county, the property tax abatement applies to all mill levies applied to the value of the property prior to the creation of the zone. The abatement also applies to the increased property value attributed to the renovations implemented in the individual business plan. Apparently, the abatement extends to any adjustments of mill levies from yield control or new levies. At the end of the abatement period, there is a three-year transition from full abatement to full taxability.

State GO bond debt rate is currently 1.36 mills, that is, \$1.36 per \$1,000 of taxable value. Taxable value is approximately 90% of 1/3<sup>rd</sup> of assessed value for non-residential properties and about 80% of 1/3<sup>rd</sup> of assessed value for residential properties. The difference between residential and non-residential taxable values is primarily because of the 3% per year valuation limit. For every \$1 million in taxable value abated pursuant to this bill, the state GO bond fund would lose \$1,360. In the ordinary course of events, the GO bond mill rate is held constant at \$1.36/\$1,000 and the value of the bonds sold determined by multiplying this mill levy times the total taxable value. Over a long period of time, the decrease in total GO bonds approximately equals the decrease in taxable value subject to the abatement.

This bill may be counter to the LFC tax policy principle of adequacy, efficiency, and equity. Due to the increasing cost of tax expenditures, revenues may be insufficient to cover growing recurring appropriations. However, the provisions of this bill minimally affect the general fund. The most substantial revenue issue is that imposed on school district operating, capital and special levies.

### **SIGNIFICANT ISSUES**

The provisions of this bill could be considered as “industrial revenue bonds” light. No bonds or other financing mechanisms are involved but the bulk of IRB activity historically in the state was attached to a 30-year property tax abatement. The provisions of this bill implement a 10 year property tax abatement with no employment requirement or investment requirement. There is a requirement for each property owner or lessee to submit a business plan, but there is no requirement that the promises of the business plan become reality.

The bill requires a local government to receive a written finding that a particular area “is economically depressed or is economically underperforming, has a higher rate of poverty or other distress factors unique to the area or has a greater potential for economic revitalization”. However, the bill provides no requirement for what entity must supply the written finding. As written, this could presumably include any written news reports, possibly including editorials, and potentially any written remarks on the internet that could be construed as designating an area as economically underperforming. This language is very broad, and policy-makers may want to either eliminate it or add clarifying and narrowing language.

Although the bill anticipates that only part of a jurisdiction would be designated as an enhanced enterprise zone, the bill is imprecise whether the enabling comparison, “A local government may designate an area as an enhanced enterprise zone upon a written finding that the area as compared with other areas with a jurisdiction, is economically depressed or is economically underperforming ...” Grammatically, the use of the phrase “a jurisdiction” could designate the state as a whole as the comparison. There is no overriding authority to regulate such issues.

This property tax abatement could be stacked with other incentives, including the investment credit, the high wage jobs credit, the angel investment credit, the rural jobs credit and, perhaps, other credits and deductions from gross receipts taxes, income taxes or corporate income taxes. At some point, the overall economic development incentives could cost local and state governments more than could ever be recovered in taxes imposed elsewhere in the system

### **PERFORMANCE IMPLICATIONS**

The LFC tax policy of accountability is approximately met since the sponsoring government is required to reevaluate each enhanced enterprise zone and report the evaluations to the Economic Development Department within five years of zone enactment. EDD is not required to report to the legislature.

LFC staff believe that the credit may be subject to the financial statement disclosure requirements per Governmental Accounting Standards Board (GASB) Statement No. 77. GASB 77 disclosure requirements are effective for financial statements for periods beginning after December 15, 2015. An assessment of the credit against the tax abatement criteria specified in GASB 77 would need to be performed by each adopting jurisdiction

### **ADMINISTRATIVE IMPLICATIONS**

Neither TRD nor DFA are assigned responsibilities relative to the provisions of this bill. EDD is assigned a modest consulting and advice role.

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

May relate indirectly to the Frontier Community Investment Credit Act – SB-326

### **TECHNICAL ISSUES**

It is unclear what evidence must be produced to establish that a potential zone “is economically depressed or is economically underperforming, has a higher rate of poverty or other distress factors unique to the area or has a greater potential for economic revitalization”.

In the same vein, neither DFA/Local Government Division, nor the Property Tax Division of the Taxation and Revenue Department are assigned approval or regulatory authority over the provisions of this bill. At minimum, the provision on page 4, lines 18-24, “A local government may designate an area as an enhanced enterprise zone upon a written finding that the area as compared with other areas with a jurisdiction, is economically depressed or is economically underperforming ...” should be carefully interpreted in order to prevent a town or city council abating all property taxes in its jurisdiction in the hope that gross receipts taxes from enhanced economic activity would make up for the loss of property tax revenue.

A local government can designate an enhanced enterprise zone and abate property taxes in the hope that gross receipts taxes from enhanced economic activity would make up for the loss of property tax revenue. However, school districts have no upside risk. Any abatement of school operating, capital or special levies would be straight revenue losses. If the inducement of the property tax abatement were successful as an economic development strategy, the local schools could be overwhelmed with additional membership. This membership – with a lag in timing – would be covered by additional amounts of the State Equalization Guarantee. If the additional membership required additional capital outlay, then the district might find themselves in the unenviable position of requiring capital funds, but not having the resources for the local match.

Since there is no oversight of the provisions of this bill, it might be useful to require some implementations of the promises in the business plan submitted to the local government as the cost of admittance into the property tax abatement.

LFC staff recommend the bill be amended, (1) to allow TRD/PTD or DFA/LGD regulatory authority over the creation of enhanced economic activity zones; and (2) that school district operating, capital and special levies be excluded from the property tax abatement.

## **OTHER SUBSTANTIVE ISSUES**

The bill has a somewhat unusual definition of “municipality”. “Municipality” means an incorporated city, town or village, whether incorporated under general act, special act or special charter”. And “local government” includes Indian nations, tribes and pueblos.

Further research<sup>1</sup> indicates that there New Mexico allows municipal charter cities. There are 33 total counties in New Mexico. Of those 33, 32 are subject to general law and one – Los Alamos – is a consolidated city-county, is subject to Charter/Home Rule.

There are 103 total municipalities in New Mexico. Of those 103, 91 of them are subject to general law, 11 are home rule charter cities and one – Silver City -- continues to operate under a territorial charter.

There are also 718 Special Purpose units, including: 622 Special Districts and 96 Independent School Districts. It is unlikely that any of the special districts would qualify to establish enhanced enterprise zones, but the special districts could become the nucleus of designated enhanced enterprise districts.

Further classifications:

- Home rule charter, adopted pursuant to NM Const. Article X, Section 6 and the Municipal Charter Act, of which there are 11. They are Alamogordo, Albuquerque, Clovis, Gallup, Grants, Hobbs, Las Cruces, Las Vegas, Rio Rancho, and Santa Fe. Los Alamos is consolidated with Los Alamos County and operates under a charter as a city-county government.
- Silver City continues to be governed by a historic territorial charter.

---

<sup>1</sup> [https://ballotpedia.org/Cities\\_in\\_New\\_Mexico](https://ballotpedia.org/Cities_in_New_Mexico)

**Does the bill meet the Legislative Finance Committee tax expenditure policy principles?**

1. **Vetted:** The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.
2. **Targeted:** The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals.
3. **Transparent:** The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies.
4. **Accountable:** The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date.
5. **Effective:** The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions “but for” the existence of the tax expenditure.
6. **Efficient:** The tax expenditure is the most cost-effective way to achieve the desired results.

LFC Tax Expenditure Policy Principle	Met?	Comments
<b>Vetted</b>	✘	
<b>Targeted</b>		
Clearly stated purpose	✔	
Long-term goals	✘	
Measurable targets	✘	
<b>Transparent</b>	✔	
<b>Accountable</b>		
Public analysis	✔	
Expiration date	✔	
<b>Effective</b>		
Fulfills stated purpose	?	
Passes “but for” test	?	Because tax incentives can stack, it is unlikely that this provision would be material in an overall investment decision.
<b>Efficient</b>	✘	
Key:    ✔ Met    ✘ Not Met    ? Unclear		