F I S C A L   I M P A C T   R E P O R T

		ORIGINAL DATE	01/19/17		
SPONSOR	Cervantes	**LAST UPDATED**	01/24/17	**HB**	
SHORT TITLE	Sale of Public Securities by Public Bodies			**SB**	43
				ANALYST	Amacher

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	**FY18**		
None	None		

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
New Mexico Finance Authority (NMFA)
New Mexico Department of Transportation (NMDOT)

SUMMARY

Synopsis of Bill

Senate Bill 43 allows public bodies to delegate authority for making certain determinations regarding sales of public securities at the time of market pricing; defines “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, 2017. SB 43 is endorsed by the New Mexico Finance Authority Legislative Oversight Committee.

FISCAL IMPLICATIONS

No known fiscal implications.

SIGNIFICANT ISSUES

Senate Bill 43 proposes a new section of the Supplemental Public Securities Act setting in place safeguards in delegating to one or more individuals with specific pricing approval authority acting in a fiduciary capacity. Delegation must occur in a public meeting of the public body with limits to the time and term; allowing for bond sales to be scheduled in line with current market conditions. Those delegated authority are serving in a fiduciary capacity ensuring accountability.

SB 43 expands both the definition of "public body" and "public securities". Currently, "public body" is 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 43 adds the NMFA into the definition of "public body"; which allows the NMFA to approve the price at which public securities are sold at the time of the final market pricing. Actions taken by the delegated individual or individuals must be reported annually to the NMFA Legislative Oversight Committee.

The public body would be required to adopt an authorizing instrument to allow delegation 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 must certify in writing that all parameters within the authorizing instrument be effective for 120 days or for a specified shorter period. In so doing, public accountability for security sales is improved.

"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 provision of any general or special statue, 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) commented 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 statue 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 of 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 notes this bill will bring the state into compliance with standard municipal market practices in the United States. More informed decisions will be produced as delegatees must be actively involved in the pricing process. The cost of issuing bonds will be decreased and the process overall will be much more efficient.

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.

PERFORMANCE IMPLICATIONS

As mentioned by NMDOT, all bonds are currently issued through the NMFA, and every issuance is subject to NMFA Board approval. NMDOT must schedule bond prices within a 24 hour window of a scheduled NMFA Board meeting or must request a special NMFA Board meeting to comply with current law. The delegation authority, as proposed in SB 43, would benefit NMDOT because it would allow NMDOT to schedule pricing for bond offerings based on interest rate market conditions rather than scheduling them close to NMFA Board meetings. The result of this scheduling flexibility could represent millions of dollars in savings to NMDOT.

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 43 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 will operate less efficiently and effectively when undertaking the public sale of bonds. An opportunity to advance good organizational and good government practices in New Mexico will be lost.

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