

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 and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Ezzell/Anderson/ **ORIGINAL DATE** 1/17/19
Nibert **LAST UPDATED** 1/28/19 **HB** 229/aHJC

SHORT TITLE Regional Air Center Special Economic District **SB** _____

ANALYST Martinez/Clark

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
Minimal	Minimal	Minimal	Recurring	General Fund & GOB Capacity
Minimal	Minimal	Minimal	Recurring	Local Governments

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received from

Economic Development Department (EDD)
 New Mexico Attorney General (NMAG)

Responses NOT Received from

Taxation and Revenue Department (TRD)
 New Mexico Finance Authority (NMFA)
 Department of Finance and Administration (DFA)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee Amendment requires districts established under this new act to provide written notice to the municipality and county that formed the district at least 60 days in advance of exercising its power of eminent domain. It also notes in the bill's title that revenue bonds issued by a district are tax-exempt.

While the original bill allowed districts to issue bonds, it provided limited language describing the bonding authority. The amendment adds new sections describing in detail this bonding authority and the ability to refund bonds. It also specifically notes these bonds are not obligations

of the state. It would be helpful to get an opinion on these bonding sections from the bond experts at the New Mexico Finance Authority or the Board of Finance.

The amendment also adds a section providing for how counties and municipalities that are part of a district may vote unanimously to dissolve a district if they find it is not meeting the needs of the community.

The amendment makes the property within a district held under a lease from a county or municipality exempt from property tax as long as there is outstanding bond indebtedness in the same way industrial revenue bonds (IRBs) are exempt from property tax.

Synopsis of Bill

Senate Bill 199 creates the Regional Air Center Special Economic District Act. This act allows for the formation of authorities to own, operate, and govern districts encompassing an industrial air center and related property for the purposes of capitalizing on the economic potential of a former U.S. military base and stimulating aviation-related activity and investment in the state.

The authority would be created by the impacted county and municipal governments and overseen by an appointed board with no elected officials. The authority would be a governmental entity of the state and given the power of eminent domain, and thus any properties owned by the authority would not be subject to property tax and there would be some exclusions from the gross receipts tax (GRT). The authority would be allowed to issue tax-free revenue bonds to acquire or improve infrastructure and promote business development related to the purposes of this act.

House Bill 229 contains specific requirements related to authority member eligibility, term limits, conflicts of interest, and removal. The district itself would consist of land and real property formerly associated with a United States military base. However, the Bill also allows other land to be included as well. To that end, the authority is granted with the power to seize land through eminent domain. The authority governing the district itself would be given a number of other specific, enumerated powers, including: bringing lawsuits, adopting policies and procedures, employing personnel, and altering the boundaries of the district.

The bill has no effective date; it is assumed to be effective 90 days after the end of the session.

FISCAL IMPLICATIONS

The bill would likely have no impact or a minimal impact on state revenues and general obligation bond (GOB) capacity, particularly initially. If the initial boundaries of the authority would encompass any private land, it appears the local governments would have to go through the normal, sometimes lengthy eminent domain process. Therefore, it is likely that at least the initial boundaries for any authority would likely encompass no or little private property, particularly if the local government(s) own aviation-related properties. It is possible that over time, the impact to the state could grow, but it is limited by the existing statutory controls and processes for the use of eminent domain.

Similarly, the bill might have a minimal impact on property tax and GRT revenues for the local governments, but they would be the entities to create the authority, so presumably an agreement would be reached to keep the local governments' revenues whole or advance their overall

economic interests.

Additional controls limiting potential boundaries of an authority or potential losses in state taxes and property taxes could be considered to ensure the fiscal impacts would always remain minimal.

If the authority created by the local government(s) is successful at encouraging economic activity in the aviation industry, this could provide the state and local governments with additional tax revenues over time through increased employment and business activity.

Section 6C states that property owned by the authority, income derived from the property and the bonds, certificates, and other evidence of indebtedness issued by an authority are exempt from taxation by the state of New Mexico.

SIGNIFICANT ISSUES

Discussions with the bill's advocates indicate the bill's original intended purpose was to promote the improvement of the former Walker Air Force base in Roswell, although the bill language is expansive enough to apply equally to any other current or future military base abandoned by the U.S. government.

Section 2: Provides definitions.

Section 3: Creation of a District. A municipality and county in which it resides may agree to form an industrial air center special economic district.

Section 4: Creation of an Authority: The authority shall consist of:

- An odd number of members, but not less than five or more than nine, appointed by the municipality or county.
- One-half of the membership shall serve for two years. The term of all other members shall be four years.
- A member shall not serve more than two consecutive four-year terms on the authority.
- The authority may authorize a county that borders the county that created the district or a municipality or an Indian nation, tribe or pueblo in a county that borders the county that created the district to become part of the authority.
 - May change the membership of the authority, up to the maximum allowed by subsection A of this section and change the terms of the members to allow the newly accepted entity to appoint one or more members to the authority.
- An elected official shall not serve on the authority. A member of the authority shall not receive a salary or other compensation from the authority.

Section 5: Powers and Duties.

- Subsection B (4), states that an authority shall accept title to the real and personal property within the area constituting the district's initial boundaries;
 - This section does not clarify what jurisdiction the authority will have over private land that falls within this area.

Section 6: Revenue Bonds, Exemption from Taxation. An authority may issue revenue bonds to encourage the location of commercial, research or industrial or other enterprises to a district or acquire, purchase, lease, construct or improve commercial, research or industrial sites or buildings or make other capital improvements, including the construction or maintenance of energy or pollution abatement or control facilities, as necessary.

An authority may issue special facility revenue bonds backed by a long-term lease of the facility to finance specific tenant facility.

Property owned by an authority, income derived from the property and the bonds, certificates and other evidence of indebtedness issues by an authority are exempt from taxation by the state of New Mexico.

The following was provided by the Office of the Attorney General:

While the bill, as currently drafted, would allow “an Indian nation, tribe or pueblo in a county that borders the county that created the district” to join the authority, it may not be possible for any tribal land to be included within the boundaries of the district without federal approval. Unlike land belonging to a county, tribal land is generally outside the jurisdiction of the state.

TECHNICAL ISSUES

The following was provided by the Office of the Attorney General:

The provisions related to conflicts of interest for members of an authority (found on page 4, lines 4 through 21) may be unnecessary given that the authority would, as a political subdivision, be undoubtedly subject to the requirements and obligations of the Governmental Conduct Act, NMSA 1978, Sections 10-16-1 to -18 (1967, as amended through 2011). If anything, the language could simply say that, “An authority member shall be subject to all of the obligations and provisions of the Governmental Conduct Act.”

The bill, as currently drafted, would allow “an Indian nation, tribe or pueblo” to become part of the authority, provided that the tribe is located “in a county that borders the county that created the district.” (This is on page 3, lines 4 through 8.) However, the Bill does not appear to allow a tribe to become a member of the authority if it is part of the county that originally created the district. The appropriate language could be re-written as:

D. The authority may authorize a county that borders the county that created the district or a municipality, an Indian nation, tribe or pueblo in a county that borders the county that created the district, or an Indian nation, tribe or pueblo in the county that created the district, to become part of the authority...

OTHER SUBSTANTIVE ISSUES

The following was provided by the Office of the Attorney General:

Any use of an authority’s eminent domain power would be subject to the Eminent Domain Code, NMSA 1978, Sections 42A-1-1 to -33 (1980, as amended through 2001).

Although the Bill would allow the authority to adopt rules “for calling emergency meetings” and to “fix the time and place of meetings and the method of providing notice of the meetings,” these powers would be curtailed by the Open Meetings Act, NMSA 1978, Sections 10-15-1 to -4 (1974, as amended through 2013), which imposes a number of limitations on emergency meetings by public bodies.

JM/JC/sb