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FISCAL IMPACT REPORT

SPONSOR Sapien ORIGINAL DATE 2/8/19
 LAST UPDATED 3/2/19 HB _____

SHORT TITLE College District Lease-Purchase Agreements SB 322/aSFC/ec

ANALYST Gaussoin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications				

(Parenthesis () Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General (NMAG)
 Higher Education Department (HED)
 Mesalands Community College (MCC)
 Central New Mexico Community College (CNMCC)
 Independent Community Colleges (ICC)

SUMMARY

Synopsis of SFC Amendment

The Senate Finance Committee amendment to Senate Bill 322 corrects a typographical error on page 5, changes one word on page 6 so that the language parallels similar language in the bill, and strikes language concerning limits on the debt issuance on page 8 identified as unclear by the NMAG.

The amendment does not address technical issues raised by NMAG concerning the proper citation for the Community College Act on page 1 and two definitions of “lease purchase arrangement” on page 3.

Synopsis of Original Bill

Senate Bill 322 amends the College District Tax Act to allow community and branch colleges and vocational and technical schools to enter into lease-purchase agreements for educational

technology that could be paid for through a property tax without voter approval, much like the authority granted to public schools in the Education Technology Equipment Act.

The bill adds definitions to the College District Tax Act for “debt,” “educational technology equipment,” and “lease-purchase agreement” and new sections to establish a procedure for a college district to propose, obtain approval for, and enter into a lease-purchase agreement for educational technology payable from ad valorem – property – taxes. Much of the language in the new sections mirrors that in the Education Technology Equipment Act concerning public schools.

The procedure requires HED to provide the college district with information about existing tax rates and indebtedness, and the district’s board to hold a meeting to consider any lease-purchase arrangement that must include a discussion of any new taxes. To finally approve the lease-purchase arrangement, the board must either hold a vote at a subsequent meeting following public notice, or delegate authority to a member, officer, or employee who may approve the arrangement.

Under SB322, the annual debt service on a lease-purchase agreement in combination with the college district’s general obligations bonds could not exceed \$5 per \$1,000 taxable value and total general obligation bond indebtedness could not exceed 3 percent of the assessed valuation of the taxable value within the college district. A college district could apply other funds to its lease-purchase payment, including general fund or investment income.

The bill limits the lease-purchase agreement to no more than five years.

In addition, the bill calls for a liberal interpretation of the act and contains a severability clause that provides that, should any part of the act be found invalid, the remainder of the act will go into effect.

FISCAL IMPLICATIONS

The bill has the potential to raise property taxes in community college and branch college taxing districts, which have a combined total capacity of \$1.32 billion. However, the five-year financing limit on the technology notes proposed by the bill constrains a college’s ability to issue bonds for its full bonding capacity without voter approval.

While NMAG approves general obligation bonds, state law does not require NMAG approval for the educational technology notes issued by the public schools, and SB322 would not require NMAG approval for educational technology notes issued by college taxing districts.

Institution	Existing Debt	3% of Assessed Valuation	Remaining Capacity
Clovis	\$4,213,110	\$25,139,211	\$20,926,101
Central New Mexico	\$95,068,842	\$570,681,145	\$475,612,303
Luna	\$0	\$23,521,245	\$23,521,245
Mesalands	\$101,558	\$3,553,930	\$3,452,372
NM Junior College	\$0	\$143,918,035	\$143,918,035
San Juan College	\$18,891,488	\$109,009,269	\$90,117,781
Santa Fe CC	\$18,976,137	\$196,629,844	\$177,653,707
Eastern NM University Roswell	\$0	\$37,510,874	\$37,510,874
Eastern NM University Ruidoso	\$0	\$21,407,546	\$21,407,546
NMSU-Alamogordo	\$2,006,998	\$24,967,350	\$22,960,352
NMSU-Carlsbad	\$0	\$80,671,929	\$80,671,929
NMSU-Dona Ana	\$19,911,172	\$135,727,861	\$115,816,689
NMSU-Grants	\$0	\$10,193,187	\$10,193,187
UNM-Gallup	\$15,500,000	\$25,166,238	\$9,666,238
UNM-Los Alamos	\$0	\$22,358,025	\$22,358,025
UNM-Valencia	\$16,116,974	\$45,761,227	\$29,644,253
UNM-Taos	\$0	\$35,224,910	\$35,224,910
		TOTAL	\$1,320,655,546

Source: FY18 or Municipal Securities Rulemaking Board, Electronic Municipal Market Access System

SIGNIFICANT ISSUES

Independent Community Colleges (ICC) says the changing nature of technology has made it difficult for community colleges to acquire technology. While traditional bond financing allows for financing over the useful life of an asset, technology now is often offered through subscriptions to cloud-based software. The asset cannot be capitalized and depreciated. As a result, community colleges must use operating funds to purchase software and those appropriations do not generally consider the cost of software.

CNM says currently bonds cannot extend past the useful life of the item fund, which “essentially eliminates” the use of general obligation bonds to fund technology.

However, NMAG raises concerns the authority to incur public debt in the Education Technology Equipment Act might not extend to college districts. The Education Technology Equipment Act, on which this bill is modeled, relies on a voter-approved constitutional amendment allowing school districts to “create a debt by entering into a lease-purchase arrangement to acquire education technology equipment without submitting the proposition to a vote of the qualified electors of the district.” The language in the amended section of the constitution, Article IX, Section 11, applies to school districts and 21-13-2(b)(4) NMSA 1978 explicitly states a community college “shall not ... be considered a part of the uniform system of free public schools.”

NMAG further reports the definition of “lease-purchase arrangement” in the bill, in addition to containing two definitions, might be overly broad. While the bill includes “any debt of the college district incurred for the purpose of acquiring educational technology equipment whether designated as a general obligation lease, note or other instrument evidencing a debt of the college district,” Article IX, Section 11, differentiates between more generally understood lease-purchase arrangements and other debt.

In addition, NMAG notes the provision in the bill allowing the district board to delegate fiduciary responsibilities to an authorized employee might not be legal under the Public Securities Act. That act contemplates the delegation of authority to issue bonds and other securities but not the authority to tax. NMAG says that provision is also in conflict with provision of the College District Tax Act and might also violate the Open Meetings Act because the provision does not require the board to formally delegate authority.

However, CNM argues, while Article IX, Sections 10, 11, and 12 address indebtedness of counties, cities, and school districts, those sections do not apply to community college districts. According to CNM, the New Mexico Supreme Court confirmed that position in *Albuquerque Metro. Arroyo Flood Control Auth. V. Swinburne*, finding, “Constitutional limitations upon the legislative power respecting governmental subdivisions as well as the debt limit thereof have application only to the particular subdivision named in the respective inhibiting constitutional provision.” CNM further cites *Daniels v. Watson*, in which the New Mexico Supreme Court found the New Mexico Junior College was not subject to the restrictions in Article IX, Section 11.

ADMINISTRATIVE IMPLICATIONS

The procedure in the bill for obtaining approval for a college district technology tax requires HED to provide the district with information on existing tax rates and indebtedness and for the college to provide and district board to review specified information regarding the agreement, creating additional administrative responsibilities for both HED and community colleges.

HED notes it has existing responsibilities related to many of the program and financial decisions made by postsecondary institutions, including the responsibility to approve purchases, construction projects, and bond issuances. HED says, “[T]he addition of education technology equipment may increase the number of projects being submitted to the NMHED staff for review.”

NMAG also reports the potential for additional administrative responsibilities: “Under Section 21-2A-6 of the College District Tax Act, the Attorney General shall approve the form and issuance of bonds, as well as all bond transcripts. If lease-purchase agreements are subject to this approval, this may require additional time devoted by attorney personnel at [NMAG].”

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The executive budget recommendation includes a \$20 million nonrecurring special appropriation to support eight colleges and universities adopting a cloud-based system for financial, human resources, and student information.

TECHNICAL ISSUES

NMAG reports the following technical issues:

- In Section 1(B), the citation to the Community College Act should be Chapter 21, Article 13 (instead of 14). If citations are included, the Technical and Vocational Institute Act is at Chapter 21, Article 17 and the Off-Campus Instruction Act at Chapter 21, Article 14A.
- There is an inadvertent “and” at the end of Section 1(E)(3).
- In Section 2(C)(5), line 2 (or page 5, line 9), “and” should be “an.”
- In Section 2(F) (page 6, line 14) “of” should be “having” to parallel the language regarding newspapers earlier in the bill.
- In Section 3(C), the final clause beginning with “which” (page 8, line 24 to page 9, line 1) is unclear. If the clause is intended to provide that the 3 percent debt limit is in addition to existing limits, the clause might be made into a separate sentence that reads: “The preceding debt limitation does not replace or amend any other existing debt limitations.”
- Section 1(F) contains two definitions of “lease-purchase arrangement.”

OTHER SUBSTANTIVE ISSUES

NMAG says, “[T]he definition of ‘lease-purchase arrangement’ is limited to lease-purchases *for education technology equipment*. While that definition makes sense in the context of the Education Technology Equipment Act, in the more general College District Tax Act, it may make sense to have a definition of ‘lease-purchase arrangement’ that isn’t limited by the type of object being purchased.”

ICC indicates the provision allowing college districts to issue general obligation debt without voter approval might be problematic for some colleges. In those college districts, the tax base is too small to generate sufficient revenue, and district governing boards might be reluctant to impose a tax without voter approval because of potential controversy.

Mesalands Community College says the bill would significantly benefit colleges by giving them the same authority granted to public schools.

ALTERNATIVES

NMAG suggests, because of questions with the bill, the Education Technology Equipment Act could instead be amended to encompass college districts.

HFG/al/sb