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FISCAL IMPACT REPORT

ORIGINAL DATE 2/25/19
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SPONSOR Ingle HB 566/aSFC/aSFI#1/
aHF1#1

SHORT TITLE Legislative Authorization of TIDD Bonds SB aHF1#1

ANALYST Clark

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21	FY22	FY23		
Indeterminate but Positive from Fees Imposed on TIDD Applicants to Pay the Reasonable Costs of Evaluating the Applications					Recurring	Board of Finance Operating Budget

Parenthesis () indicate revenue decreases

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)
 New Mexico Finance Authority (NMFA)
 Department of Finance and Administration (DFA)

SUMMARY

Synopsis of HF1#1 Amendment

The House Floor Amendment #1 makes a few technical changes. First, it strikes an item from the Senate Finance amendment and replaces it with nearly identical language but makes a technical change to require only the first issuance of bonds to occur within four years. These bonds are sometimes issued in series rather than all at once, so only the initial bond issuance needs to be within four years. Second, it strikes an instance of the word “only” that should have been removed as part of the Senate Finance amendment as part of the language changes. Third, it corrects a reference to a Subsection B to also include Subsection C to refer to both municipal and county GRT dedications instead of only referring to municipal dedications.

Finally, it adds an applicability section and an effective date of July 1, 2019. The applicability section states, “The provisions of this act shall not apply to dedications of gross receipts tax increments by the state board of finance made prior to the effective date of this act.” This clarifies the bill does not retroactively invalidate existing Board of Finance dedications of the

state GRT increment. This language does not prevent the other provisions of the bill from applying to existing TIDDs, such as the requirement for annual reporting. It exclusively prevents the bill's provisions from applying to the actual dedication made by the Board of Finance so that all such dedications made in accordance with existing law would not be rendered invalid.

Synopsis of SFI#1 Amendment

The Senate Floor Amendment makes two changes. First, for the new restriction on how much of the state GRT increment may be dedicated in relation to dedicated portions of the city and county GRT increments, it institutes a 10-year delay before the restriction becomes effective, and it changes the maximum state increment from the lesser of the two local increments to the average of the two.

The second change is a minor technical correction to clarify that when it says “the effective date of the dedication is on or after the date the bonds are approved by the legislature” it is referring in this instance only to dedications by the Board of Finance of the state GRT increment. Local increments do not require bonding and do not require legislative approval in current statute or in the amended bill.

Synopsis of SFC Amendment

The Senate Finance Committee Amendment makes three categories of changes. First, it removes two changes in the bill that restricted flexibility for local governments and the Board of Finance; this returns that flexibility. For local governments, it returns (in full) their flexibility for how dedications of their increments may be used, no longer restricting them to bonding. For the Board of Finance, it changes the requirement for the board to only consider “net new economic base jobs” to guidance that the board shall simply prioritize these jobs in its consideration.

Second, it adds a four-year expiration date for dedications by the Board of Finance of a portion of the state GRT increment that have not yet received legislative authorization and had bonds issued – this sets a timeframe for the applicant to receive legislative approval and issue bonds. The Board of Finance and the Department of Finance and Administration support this expiration date. This language is not intended to impact dedications of local increments – only the state increment.

Third, the amendment makes minor technical corrections.

These changes address the two technical issues noted with the original bill. Furthermore, regarding questions that arose with the original bill's allowance for “reasonable” fees for TIDD applications, the Board of Finance reports existing statute similarly allows the board to charge “reasonable application fee[s]” for private activity bond applications. In both cases, the board would need to issue a rule providing guidelines for the fees that may be charged, which would require posting of the proposed guidelines and a public input period.

Synopsis of Original Bill

Senate Bill 566 amends the Tax Increment for Development Act (TIDA) to clarify existing statutes related to tax increment development districts (TIDDs) and to make a few changes. Existing statute requires legislative authorization in order for a TIDD to use a portion of the state

gross receipts tax (GRT) increment, but this bill restructures the flow of the language to make that requirement clearer.

The bill makes the following additional clarifications that likewise do not make any substantive changes from existing statute:

- The state GRT increment dedicated to a TIDD may only be used to secure GRT increment bonds and to pay the principal of, interest on, and any premiums due in connection with the bonds;
- If the state Board of Finance (BOF) adopts a resolution to dedicate a portion of the state GRT increment to a TIDD, it must make the dedication contingent on legislative authorization of the bonds for which the increment would be used – while this specific language did not previously exist in statute, the act already required legislative authorization, so this adds clarity to the process;
- The bill removes from the list of local GRT increments that can be dedicated to a TIDD a municipal increment that no longer exists in statute;
- The bill clarifies the timing of when the state GRT increment dedication shall be effective, noting it only becomes effective on specified dates (already in statute) following legislative approval of the bonds and notice to the Taxation and Revenue Department (TRD);
- A TIDD board cannot issue bonds against GRT increments without first receiving the required local, and possible state, approvals;
- BOF must notify TRD of its dedication of a state GRT increment and of the status of legislative approval; and
- The bill makes other, minor clarifying language changes.

In addition to those clarifications, the bill makes the following substantive changes:

- Adds a definition of “new full-time economic base job” for guidance to BOF when evaluating TIDD applications, addressing concerns raised by legislative and executive economists during a recent TIDD application review process;
- Limits the dedication of a portion of the state GRT increment to no more than the lesser of:
 - The local GRT increment dedicated by a municipality (if the district is located inside a municipality), or
 - The local GRT increment dedicated by a county;
- Restricts local GRT increments to the same uses as the state increment – they must be used for bonds – removing payments related to “loans or advances to, or any indebtedness...”;
- Provides for a filing fee to accompany a TIDD application to BOF to pay the reasonable costs, as determined by the Department of Finance and Administration, of evaluating the application and requested use of the state GRT increment; and
- A TIDD receiving a state GRT increment must report annually on September 1 to BOF and LFC the capital investment in the district, total new jobs, new full-time economic base jobs, and total revenues distributed to the district in each previous fiscal year.

The bill also amends base year revision language, which could arguably be either clarification or substantive (*see Technical Issues*).

There is no effective date of the bill. It is presumed to become effective 90 days after this legislative session ends.

The New Mexico Attorney General's office (NMAG) provided the following detailed breakdown of the bill's actions by section.

Section 1 (amending Section 5-15-3: Definitions)

- Amends the definition of “gross receipts tax increment.”
- Adds a new definition for “new full-time economic base job.”

Section 2 (amending Section 5-15-15: Tax increment financing; gross receipts tax increment)

- Eliminates the municipal regional transit gross receipts tax as a gross receipts tax increment that may be used to secure gross receipts tax increment bonds.
- Removes the state gross receipts tax from the list of gross receipts taxes a municipality or county may use to secure a gross receipts tax increment.
- Clarifies that all gross receipts tax increments dedicated pursuant to TIDA, including the state gross receipts tax increment, may only be used for the purpose of securing gross receipts tax increment bonds.
- Allows the state board of finance (BOF) to dedicate a gross receipts tax increment attributable to the state gross receipts tax to pay the principal of, interest on and any premiums due in connection with gross receipts tax increments bonds issued to finance a project within the district provided that: (1) the increment from the state gross receipts tax is no more than the lesser of: (a) the increment from municipal option gross receipts taxes dedicated by resolution by the municipality, if the district is located in a municipality; or (b) the increment from county option gross receipts taxes dedicated by resolution by the county; and (2) the state board of finance has adopted a resolution dedicating a portion of the state gross receipts tax increment for the purpose of securing gross receipts tax increment bonds in order for a district to use a portion of the state gross receipts tax increment to secure bonds.
- Requires legislative approval of the issuance of state gross receipts tax increment bonds required pursuant to Section 5-15-21 of TIDA as a condition of BOF's dedication of the state gross receipts tax increment.
- Makes clear that the BOF's resolution dedicating a portion of the state gross receipts tax increment becomes effective only after the bonds have been approved by the legislature and following the notification period to the Taxation and Revenue Department (TRD).
- In connection with the findings that must be included in BOF's resolution, the BOF is directed, based on its review of the applicable tax increment development plan, to “only consider net, new, economic-base jobs that would not have occurred on a similar scale and time line but for the use of the state gross receipts tax increment” and not “retail jobs, call center jobs, and service jobs where the customer is typically on site” in making its finding that the use of the state gross receipts tax increment is likely to stimulate the creation of jobs, economic opportunities add general revenue for the state.

Section 3 (adding new Section 5-15-15.1 titled “Filing Fee for Evaluating Use of State Gross Receipts Tax Increment”)

- Authorizes the BOF to charge a filing fee to “pay the reasonable costs, as determined by the department of finance and administration, of evaluating the tax increment development plan and the district’s requested use of a state gross receipts tax increment.”

Section 4 (amending Section 5-15-16: Bonding authority; gross receipts tax increment)

- Makes non-substantive changes for clarity

Section 5 (amending Section 5-15-20: General bonding authority of a tax increment development district; other limitations)

- Adds a new subsection A reiterating that a district board shall not issue bonds against gross receipts tax increments attributable to (1) the state gross receipts tax without the BOF dedication of a portion of the state gross receipts tax increment for the purpose of securing the gross receipts tax increment bonds and legislative approval of the bonds; or (2) gross receipts tax imposed by a taxing entity without the taxing entity’s agreement as evidenced by a resolution.

Section 6 (amending Section 5-15-21: Approval required for issuance of bonds against state gross receipts tax increments)

- Makes clear that legislative approval is required not only prior to the issuance of gross receipts tax increment bonds, but also before a distribution is made by TRD pursuant to Section 7-1-6.54 NMSA 1978.

Section 7 (amending Section 5-15-25.3: Base Year Revision - Effect)

- Upon approval of a revision of the base year used to determine a district’s gross receipts tax increment, removes the requirements that (1) a district return any gross receipts tax increment distributed to the district between the time the revenue collection began and the end of the revised base year, and (2) upon receipt of the revenue identified above, the taxation and revenue department remit to the taxing entities that dedicated a gross receipts tax increment to a district a pro rata share of the revenue.

Section 8 (amending Section 5-15-27: Dedication of gross receipts tax increment; notice to taxation and revenue department)

- Clarifies that the effective date of a dedication of gross receipts tax made by the BOF or taxing entity cannot be before the date of legislative approval pursuant to Section 5-15-21.
- Requires the BOF or a taxing entity to indicate in its notice to TRD that before any distribution attributable to the state gross receipts tax increment is made to a tax increment development district, legislative approval of the gross receipts tax increment bonds is required.

Section 9 (adding a new section to the TID Act titled “Report Required”)

- Requires a tax increment development district board that receives a distribution of a gross receipts tax increment attributable to the state gross receipts tax to submit a report annually on September 1 to the BOF and the legislative finance committee that includes the estimated capital investment in the district, the estimated total net new jobs and new

full-time economic base jobs created in the district and the total revenues distributed to the district in each previous fiscal year.

Section 10 (amending Section 7-1-6.54)

- Amends the Tax Administration Act to require TRD to make distributions of a tax increment into a special fund of the tax increment development district in accordance with a notice pursuant to Section 5-15-27 NMSA 1978 specifically.

FISCAL IMPLICATIONS

There would be indeterminate but positive revenues to the Board of Finance from fees imposed on TIDD applicants to pay the reasonable costs of evaluating the applications. Unlike tax revenues, which need specific appropriation authority, this fee may be used by the department for the purpose specified, and any excess fee revenue must be returned to the applicant because the bill does not provide language sending the fee to any fund that would retain the excess.

SIGNIFICANT ISSUES

The Legislature can authorize a part of the state’s GRT increment to help fund the initial infrastructure costs of a TIDD. Some developers have interpreted the Tax Increment for Development Act in a manner that would bypass the Legislature’s exclusive appropriation authority and let the executive branch directly appropriate general fund revenues to select infrastructure projects. The clarifying language proposed in this bill would ensure protection of the Legislature’s exclusive power to appropriate money from the state treasury and preserve the separation of powers set out in the New Mexico Constitution.

The bill also makes changes to clarify the process for dedication of gross receipts tax increments from the state gross receipts tax, requirements, and timing. The bill also makes changes to improve accountability and oversight.

NMAG notes the bill “is intended to quash the notion raised by certain developers at various times that a dedication of a portion of the state gross receipts tax increment may be used for something other than to secure gross receipts tax increment bonds.”

The Department of Finance and Administration (DFA) notes the definitions in the bill clarify the intent of the act, and the proposed reporting requirements would streamline the application review process for BOF. DFA provided the following additional analysis.

The bill clarifies the intent of the TIDD act to only allow for the state’s dedication of an increment of gross receipts tax to be used to secure bonds. The bonds must be authorized by the Legislature, and the effective date of the dedication would occur on or after the date of legislative approval. Generally, TIDDs add revenue to the municipality or county in which they are located by bringing in residents, businesses, and jobs from outside the municipality or county. As far as the state is concerned, moving residents, businesses, and jobs between municipalities or counties within the state is immaterial for the state.

For the state to benefit, desirable businesses and jobs must be brought in from outside of New Mexico. New businesses from outside of New Mexico or the expansion of businesses within the state must be a direct result of TIDD activities; any TIDD

application must prove that the activity would not have otherwise occurred in substantially the same form if the state's increment is not obtained. The state would not benefit more than the local municipality or county from TIDD activities. This is confirmed in the bill, as it restricts the state's GRT dedication to the lower of the county or municipal dedication.

ADMINISTRATIVE IMPLICATIONS

DFA provided the following administrative implications.

Currently, the Economic Analysis Unit (EAU) of DFA reviews TIDD applications submitted to BOF that request an increment of state GRT. EAU then provides BOF with a recommendation on whether the request meets the requirements of the TIDD act. During various times of the year, the EAU has critical responsibilities with strict deadlines and is unable to review TIDD applications. The review process can be delayed for a few months. BOF may seek the assistance of an independent economic consultant to review the applications but does not have the budget to hire external consultants. The proposed application fee in the bill would allow BOF to hire independent economic consultants and accelerate the application review process.

The bill does not change the role of the New Mexico Finance Authority (NMFA), which includes reviewing proposed TIDD bonds against the state GRT increment and presenting a bill authorizing issuance of those bonds to the Legislature for its consideration of approval. However, NMFA reports the narrowed uses provided for in the bill will likely result in fewer applications and have less negative financial impact on NMFA operations.

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

- 1. Adequacy:** Revenue should be adequate to fund needed government services.
- 2. Efficiency:** Tax base should be as broad as possible and avoid excess reliance on one tax.
- 3. Equity:** Different taxpayers should be treated fairly.
- 4. Simplicity:** Collection should be simple and easily understood.
- 5. Accountability:** Preferences should be easy to monitor and evaluate