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FISCAL IMPACT REPORT

ORIGINAL DATE 03/01/21

SPONSOR Griggs/Burt LAST UPDATED _____ HB _____

SHORT TITLE County Courthouse Bonding Act SB 321

ANALYST Torres

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY20	FY21	FY22	FY23	FY24		
		\$12,000.0	\$12,000.0	\$12,000.0	Recurring	County Courthouse Bonding Fund
		(\$12,000.0)	(\$12,000.0)	(\$12,000.0)	Recurring	General Fund

Parenthesis () indicate revenue decreases

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
\$15.5			\$15.5	Nonrecurring	General Fund- TRD

Parenthesis () indicate expenditure decreases

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Taxation and Revenue Department (TRD)
 Department of Finance and Administration (DFA)
 New Mexico Finance Authority (NMFA)

SUMMARY

Synopsis of Bill

Senate Bill 321 (SB 321) enacts the County Courthouse Bonding Act, which allows the New Mexico Finance Authority to issue County Courthouse Tax Revenue Bonds, creates the county courthouse grant fund, and creates a monthly \$1 million distribution from the net receipts attributable to gross receipts tax revenue starting July 1, 2021 until June 30, 2026.

The effective date of this bill is July 1, 2021.

FISCAL IMPLICATIONS

SB 321 creates a monthly, \$1 million distribution from general fund revenues to support bonding made from the newly created county courthouse bonding fund. The bill requires grants to be matched equally by the qualifying county and a determination by NMFA that the project is cost-effective.

TRD expects to be able to absorb the impact of these changes as outlined in this standalone bill within the annual tax year implementation. This July 1, 2021, TRD implements the conversion for the combined reporting system (CRS) redesign project appropriated by the Legislature. On July 1, 2021, TRD also implements the local option compensating tax, local option GRT on Internet sales, a new version 12 of Gentax, and moves to destination-based sourcing of the GRT. Due to the effective date of July 1, 2021 for this bill and other proposed bills, any changes to rates, deductions and distributions adds to the complexity and risk TRD faces July 1, 2021 to ensure complete readiness and testing of all processes. If several bills with similar effective dates become law there will be a greater impact to TRD and additional staff workload costs or contract resources may be needed to complete the changes specified by the effective date(s) of each bill. TRD recommends an effective date of date of January 1, 2022 or July 1, 2022 to ensure proper implementation of the legislation in TRD administration and system processes.

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.

SIGNIFICANT ISSUES

The LFC capital outlay framework included \$4.8 million, as requested by the courts, for capital needs for magistrate and district courts, statewide. In addition to the \$4.8 million, the framework includes \$10.7 million for planning, design, and construction of phase 1 for a new magistrate court building in Santa Fe, and \$275.5 thousand for parking system and security upgrades for the Bernalillo Metropolitan Court.

The Taxation and Revenue department notes the following issues:

The county courthouse bonding fund creates a financing source to pay the debt service costs of revenue bonds issued for the purpose of the renovation and construction of county courthouses. If county courthouses are in need of repairs or replacement, the fund created in the legislation would assist with funding the projects. If repairs or construction improve a security weakness in a courthouse it may be beneficial to public safety.

Earmarking \$12 million of GRT revenue narrows the general fund revenue base and may result in a reduction of government services, increases in taxes, or both.

Although GRT is the single largest source of operating funding for the state, there are several other revenue streams that are used by the state as well as by local government to fund capital improvements, including courthouses. Local bonds backed by local revenue sources may be a more appropriate source of these types of improvements. The New Mexico Finance Authority offers local governments competitive financing options, in addition to private sector financing. Senior severance tax bonding (STB) capacity may

also be a more appropriate source of this infrastructure funding. This legislative session, over \$400 million in senior STB capacity is available for appropriation.

While counties are currently required to provide adequate district court facilities, there is no dedicated source of funding, which can lead to conflict between local judges and court officials on the one hand, and county officials on the other, as county officials may be reluctant to increase local option gross receipts taxes, or dedicate existing tax revenues, in order to support the financing of courthouse projects. This bill would relieve counties of the burden of providing court facilities, while removing the tax burden of the construction and/or financing from county residents and businesses, and would provide a dedicated funding mechanism for courthouse financing.

This bill narrows the gross receipts tax (GRT) base. Many of the efforts over the last few years to reform New Mexico's taxes focused on broadening the GRT base and lowering the rates. Narrowing the base leads to continually rising GRT rates, increasing volatility in the state's largest general fund revenue source. Higher rates compound tax pyramiding issues and force consumers and businesses to pay higher taxes on all other purchases without an exemption, deduction, or credit.

The Administrative Office of the Courts notes that counties are responsible to build and maintain district courthouses in their county, by statute. New Mexico has 33 district courthouses statewide, some are new and some are nearing end of life. This bill would involve the state in assisting counties in building and renovating county courthouses.

The Department of Finance and Administration points out:

As county courthouses can be "shared" spaces with other local public bodies such as a municipality, there is no mention in the bill of the possibility of a shared expense to fund the upgrade of the space. The county would bear the entire burden for providing the matching funds. This bill should allow both counties and municipalities to provide matching funds if they share the county courthouse facility.

The bill does not define "qualified county" so it is difficult to determine which counties may be eligible for applying for a county courthouse grant.

Any balance in the county courthouse bonding fund shall revert to the state general fund upon NMFA's certification that: (1) the Local Government Division (LGD) of the Department of Finance and Administration, NMFA, and the Administrative Office of the Courts (AOC) have agreed that the county courthouse tax revenue bonds issued pursuant to the County Courthouse Bonding Act have been retired, that no additional obligations of the county courthouse bonding fund exist and that no additional expenditures from the fund are necessary; or (2) a court of proper jurisdiction has ruled that the county courthouse tax revenue bonds have been retired, that no additional obligations of the county courthouse bonding fund exist and that no additional expenditures from the fund are necessary a determination must be made.

Finally, the New Mexico Finance Authority highlights the following issues:

SB 321 establishes county courthouse bonds to be issued by NMFA as standalone bonds

which can be sold through competitive or negotiated sales to the state, investment bankers, or institutional investors. NMFA's Public Project Revolving Fund ("PPRF") is not listed as a possible buyer. In contrast, similar programs managed by NMFA include public health facilities funded by cigarette taxes and public buildings through the State Building Bond Act funded by state gross receipts taxes. The PPRF has directly purchased all of the cigarette tax bonds and state building bonds, rather than issuing standalone bonds at much higher all-in costs. The PPRF passes its AAA cost of funds to PPRF borrowers without a credit premium and without fees and other bond issuing costs, which include, without limitation, bond counsel, disclosure counsel, underwriter counsel, municipal advisory and trustee fees, rating fees and the cost of official statement preparation. If cigarette tax bonds or state building bonds would have been issued on either a competitive or negotiated basis as standalone bonds, the all-in cost would have been substantially higher, both due to cost of issuance and to the much lower rating that the bonds would receive. A \$4.5 million bond to fund courthouse projects backed by appropriated revenue spread over 5 years would draw limited investor interest and would likely be rated in the A range. The ability to issue 5 year rather than 30 years bonds is a plus.

The bill does require counties to bear half the cost of any project with matching funds...counties would likely then, however, have to borrow their match from the PPRF, and most likely for a much longer period than 5 years. The PPRF has restrictions on its ability to make appropriation loans, which would not apply to bonds backed by a courthouse bond fund held by NMFA, but which does restrict counties from accessing funds from the PPRF backed by annual appropriations. The PPRF appropriation capacity formula is contained in the PPRF indentures and, based on the current PPRF calculations, has limited capacity to make new appropriation loans at this time.

The proposed method for competitive sales, with sealed bids and 2 percent deposits, is also not how NMFA typically sells bonds on a competitive basis. Rather, both PPRF and NMDOT bonds (issued through NMFA), when sold on a competitive basis, are sold on a digital platform operated by a national firm with the latest technology at a specified time. Selling competitive bonds in this manner greatly increases market access and results in lower interest cost. Advertising in New Mexico newspapers still takes place.

Under SB 321, rules governing terms and conditions for courthouse grants are set by NMFA. The role of the Administrative Office of the Courts is unclear.

TECHNICAL ISSUES

Statutes authorizing the issuance of bonds usually contain provisions permitting the issuance of refunding bonds, to increase flexibility in financing and allow issuers of municipal debt to take advantage of economic conditions that would permit savings in interest costs of previously-issued bonds by refinancing them. The Taxation and Revenue Department (TRD) recommends that additional sections permitting issuance of refunding bonds be added.

Section 7(B) of the bill provides for both the revenues appropriated by the legislature to the fund and the proceeds of any bonds issued pursuant to the bill be placed in the fund, comingling bond proceeds and revenues pledged for debt service. TRD recommends that these two sets of funds be kept entirely separate, and that proceeds of the bonds be deposited in a separate fund, and not

mingled with the funds that will be used to pay debt service, which should be segregated and used for no other purpose than debt service. Section 3(B) of the bill similarly provides that moneys in the fund are pledged to payment of principal and interest on the bonds; therefore, if proceeds of the bonds were to be deposited in the fund, they would be pledged to payment of principal and interest on those same bonds, and could not be used for project costs or grants to counties.

TRD notes that if the bonds are intended to be tax-exempt bonds, offering the issuer a preferential rate of borrowing, that tax-exempt bonds must be used to finance new infrastructure, not renovation. Case law suggests that if a renovation is so significant that it is akin to new construction that would qualify as construction. However, tax-exempt bond proceeds should not be used for minor to moderate renovation to avoid risking the tax-exempt status of the bonds under any IRS review.

The bill does not define “qualified county.” Indeterminate which counties may be eligible for applying for a county courthouse grant.

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