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## FISCAL IMPACT REPORT

**SPONSOR** Silva                      **DATE TYPED** 2/18/05                      **HB** 518/aHBIC

**SHORT TITLE** NMFA Economic Development Loans                      **SB** \_\_\_\_\_

**ANALYST** Kehoe

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				(See Fiscal Impact Narrative)

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Senate Bill 477/aSCORC/aSJC.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Finance Authority (NMFA)  
 Economic Development Department (EDD)  
 New Mexico Environment Department (NMED)

### SUMMARY

#### Synopsis of HBIC Amendment

The House Business and Industry Committee amendments provide for the following:

- Amends the title of the bill to reflect a proposed new section within the bill.
- Expands the definition of “quantifiable benefits” to include those benefits which the borrower by contract agrees to provide, including: “local hiring quotas, job training commitments and installation of public facilities or infrastructure”.
- Provides that all projects, whether “standard projects” or “state projects,” require statutory authority prior to receiving financial assistance from the economic development revolving fund.
- Requires that rules of the authority relating to “state projects” include provisions to ensure achievement of the economic development goals of the state project and that describe the specific means of recovering public money or other public resources if an eligible entity defaults on its obligations to the authority.
- Requires that the trust indenture securing the economic development revolving fund

bonds to contain reasonable provisions for protecting and enforcing the rights and remedies of bondholders, the duties of NMFA to exercise its powers and custody, and the use and investment of money; requires NMFA to provide by the trust indenture for the payment of the proceeds of the economic development revolving fund bonds and the revenue to the trustee under the trust indenture or other depository for disbursement with safeguards as determined by NMFA.

- Inserts two new sections.
  1. The first requires confidentiality of proprietary technical or business information relative to the relocation or expansion of a business and exempts such information from the Inspection of Public Records Act; makes it unlawful for any employee of EDD, NMFA or any former employee of either agency to disclose such information, except in response to a district, appellate or federal court order; and provides that any such person revealing such information may be guilty of a misdemeanor and may be sentenced accordingly.
  2. The second section adds a provision stipulating the Statewide Economic Development Finance Act is an additional and alternative method for financing projects and is intended to be supplemental and additional to powers conferred by other laws.
- Other amendments throughout the bill make technical changes clarifying “bonds” as “economic development fund bonds”, make grammatical changes, and make other non-substantive changes providing for consistency throughout the bill.

### Synopsis of Original Bill

House Bill 518, for the New Mexico Finance Authority Oversight Committee, amends the Economic Development Finance Act to authorize the New Mexico Finance Authority (NMFA) to issue bonds and make loans for economic development projects statewide; changes the name of the economic development revolving fund; and amends and repeals certain sections of the Act.

### Significant Issues

The 2003 Legislature enacted the Statewide Economic Development Finance Act providing for creation of an economic development finance program and authorized NMFA to issue certain economic development bonds, to purchase participation loans and make guarantees on behalf of entities engaged in qualifying economic development projects. The Act further allowed NMFA to issue tax exempt private activity bonds on behalf of small manufacturers and industrial revenue bonds. However, no funding mechanism was established for the program.

House Bill 518 provides the methodology and mechanics to implement the purposes of the Economic Development Act in accordance with Article 9, Subsection D of Section 14 of the Constitution of New Mexico. Article 9 of the Constitutions allows the state or a county or municipality to create new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses if the assistance is granted pursuant to legislation approved by a majority vote of those elected to each house of the legislature so long as the legislation must include adequate safeguards to protect public money or other resources used for purposes of the legislation.

House Bill 518 proposes planning and financing assistance to eligible entities to retain and expand existing businesses in the state, to encourage established businesses in other states to relocate to New Mexico and to support new businesses in the state by providing for loans, loan par-

ticipations and loan guarantees from a proposed fund and establishes specific rules governing the terms and conditions for loans.

The bill requires NMFA to adopt specific rules to implement the financial assistance program, subject to approval of the New Mexico Finance Authority Oversight Committee, including establishing:

1. Procedures for applying for financing assistance;
2. Credit qualifications for eligible entities and establish terms and conditions for financing assistance;
3. Economic development goals for projects in consultation with EDD;
4. Criteria for determining whether a project is to receive financing assistance as a standard project or a state project;
5. Methods for determining quantifiable benefits;
6. Safeguards to protect public money and other public resources provided for a state project; and
7. Procedures for requests approved by law for state projects; and
8. Fees to pay the costs of evaluating, originating and administering financing assistance.

House Bill 518 further proposes the following amendments and provisions to the Statewide Economic Development Finance Act:

- Repeals the current “statewide loan participation fund” and creates the “economic development revolving fund” intended to provide the finance assistance.
- Broadens the definition of “financing assistance” authorizing NMFA to issue project revenue bonds, make, participate in and guarantee loans for economic development projects to or for eligible projects.
- Authorizes NMFA to purchase participation loans from local banks for projects approved for programmatic reasons by EDD, subject to rules promulgated by NMFA and approved by the NMFA Legislative Oversight Committee. According to NMFA, these loans would be made at a rate below the rate offered by a bank and would reduce the interest cost to the borrower.
- Stipulates that only NMFA may issue project revenue bonds on behalf of eligible entities.
- Adds “not-for-profit” business enterprises to the list of eligible entities which currently includes a for-profit business, including a corporation, a limited-liability company, partnership or other entity.
- Creates the economic development revolving fund.
- Requires “standard projects” be approved by NMFA pursuant to rules approved by the NMFA Legislative Oversight Committee.
- Expands the definition of “standard project” to include not only land, buildings and improvements, but also machinery and equipment, operating capital and other personal property for which financing assistance is provided for adequate consideration, taking into account the anticipated quantifiable benefits of the standard project. Standard projects would not require legislative approval, but only approval by NMFA, pursuant to rules adopted by the NMFA Legislative Oversight Committee. However, the quantifiable benefits of the standard project must yield a sufficient return to the state in order not to violate the anti-donation clause of the constitution.
- Defines a “state project” as land, buildings or infrastructure for facilities to support new or expanding eligible entities for which financing assistance is provided pursuant to the provisions of the constitution, thereby requiring the project be approved by law.

- Provides that financing assistance documents include provisions to ensure achievement of the economic development goal of the state project pursuant to rules of NMFA describing the specific means of recovering public money or other public resources if the recipient defaults on a loan.

## **FISCAL IMPLICATIONS**

House Bill 518 does not contain an appropriation. However, in a press release dated December 17, 2004, the governor announced “*Invest New Mexico*” initiatives to build state infrastructure, including a \$35 million “Smart Money” initiative to be headed by the New Mexico Finance Authority. According to the release, “by partnering with New Mexico banks, NMFA will leverage access of up to \$100 million in additional business capital” for the economic development initiative. It is anticipated the proposed \$35 million would initially capitalize the economic development revolving fund. According to NMFA, the fund would allow over \$90 million in loans to be made over 10 years, based on the initial appropriation and generate an estimated \$55 million in private investment, create 2,769 direct and indirect jobs, and add more than \$1 billion in total wages over the next decade.

The increase in capital, provided an appropriation is approved to capitalize the proposed fund, is expected to increase economic development, particularly in rural and underserved areas of the state potentially making these areas more self-sufficient from a local tax revenue standpoint. The ability to borrow could also make local entities less reliant on the state for capital outlay funding assistance.

## **ADMINISTRATIVE IMPLICATIONS**

House Bill 518 requires NMFA to administer the economic development revolving fund and will rely on the underwriting expertise of banks during the loan origination process to ensure the integrity of the loans while the Economic Development Department (EDD) is required to coordinate eligibility surveys, evaluations, recommendations, and other necessary documentation for the purposes of recommending projects to NMFA for financing assistance. The bill allows EDD to request staffing and other assistance from NMFA as necessary to carry out the provisions of the bill.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

House Bill 518 originally duplicated Senate Bill 477. However, the Senate Corporations and Transportation Committee adopted amendments changing Senate Bill 477 as follows:

- Provides that all projects, whether “standard projects” or “state projects,” require statutory authority prior to receiving financial assistance from the economic development revolving fund.
- Expands the definition of “quantifiable benefits” to include those benefits which the borrower by contract agrees to provide including: “local hiring quotas, job training commitments and installation of public facilities or infrastructure”.
- Requires that rules of the authority relating to “state projects” include provisions to ensure achievement of the economic development goals of the state project and that describe the specific means of recovering public money or other public resources if an eligible entity defaults on its obligations to the authority.
- Exempts proprietary technical or business information obtained by the New Mexico Fi-

nance Authority (NMFA) or the Economic Development Department (EDD) from the Inspection of Public Records Act and requires both NMFA and EDD to treat such information as confidential.

- Exempts proprietary technical or business information obtained by the New Mexico Finance Authority (NMFA) or the Economic Development Department (EDD) from the Inspection of Public Records Act and requires both NMFA and EDD to treat such information as confidential.
- Adds a provision stipulating the Statewide Economic Development Finance Act provides an additional and alternative method for financing projects and is intended to be supplemental and additional to powers conferred by other laws.
- Exempts proprietary technical or business information obtained by the New Mexico Finance Authority (NMFA) or the Economic Development Department (EDD) from the Inspection of Public Records Act and requires both NMFA and EDD to treat such information as confidential.
- Makes technical adjustments to the bill.

## **TECHNICAL ISSUES**

For clarification purposes, the following amendment is proposed:

1. On page 16, line 17, the word “approved” should be changed to “approval”.

## **OTHER SUBSTANTIVE ISSUES**

According to NMFA, Senate Bill 477 proposes a quantitative method to determine the economic and fiscal impact of a loan weighted against the NMFA financing to ensure the state and local governments get a sufficient return (jobs, wages, taxes, etc.) and to ensure NMFA loans are repaid.

NMFA indicates “New Mexico unlike most other states, lack state funding dedicated to providing gap financing for economic development projects and places New Mexico at a disadvantage in growing existing businesses and attracting out-of-state prospects. The proposed provisions in this bill seek to lessen the disadvantage by offering what many other states offer businesses and qualified not-for-profit corporations.”

Analysis of this bill reveals the following additional points to consider while deliberating proposed amendments to the Economic Development Act:

- There appears to be no cap on state participation in project loans.
- EDD is required to evaluate projects, but there is no requirement that these evaluations be made public.
- There is no requirement for regular reporting to NMFA, LFC or other oversight entity.
- There is no “But For” requirement to limit state involvement in projects that would normally be financed by private sector without state participation.

## **POSSIBLE QUESTIONS**

1. The State Investment Council (SIC) website notes that “New Mexico statutes allow for investments in Corporate Bonds, Certificates of Deposit in New Mexico financial institutions, New Mexico Mortgage Finance Authority Bonds, Small Business Administration

and Farm and Home Administration Guarantees, as well as participations in real estate-related business loans.” Does SB 477 duplicate SIC’s current investment authority, or does the bill provide an alternative vehicle?

2. As an economic development program rather than an investment program, will the loans be backed by the full faith and credit of the U.S. government?
3. Could SIC funds be used to fund this initiative?
4. Will the economic development fund proposed in this bill require future state appropriations?
5. Why should “state project” loans require legislative authority, but not “standard project” loans?
6. Given the additional responsibilities and duties specified within the bill, do NMFA and EDD have the capacity to fulfill the expectations without new resources?

LMK/lg