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## FISCAL IMPACT REPORT

**DATE**

**SPONSOR** Grubestic **TYPED** 3/17/05 **HB** \_\_\_\_\_

**SHORT TITLE** Local Government and Property Owner Agreements **SB** 830/aSCORC/aSJC/aSFI#1

**ANALYST** Hadwiger

### APPROPRIATION (in \$000s)

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB654.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Finance and Administration (DFA)

Department of Environment (NMED)

### SUMMARY

#### Synopsis of SFI #1 Amendment

The Senate Floor #1 Amendment would eliminate a provision in the original bill that would have allowed municipalities to enter into a development agreement with a property owner outside its planning and platting jurisdiction if it is part of a proposed annexation or utility service agreement.

#### Synopsis of SJC Amendment

The Senate Judiciary Committee amendment strikes the SCORC amendment. The SJC amendment clarifies that a county as used in the bill means an H class county or a county with a population greater than 25,000; and a municipality as used in the bill means a home rule municipality, a charter municipality or a municipality with a population greater than 20,000. The SJC amendment adds language that a development agreement shall not commit the municipality or county to obligations in contravention of Section 6-6-11 NMSA 1978 (Bateman Act) and duties of a

municipality or county pursuant to such agreement are subject to sufficient appropriations. Additional language provides for agreements to be consistent with the comprehensive plan and any related sub-area plans when the development agreement is entered into; requires terms of an agreement to be specified; provides for periodic reviews and termination in the event of a material breach and provides for a progress review not more than fifteen years after the agreement is executed. Further, for up to twenty years after an agreement, the use of land subject to the development agreement shall be subject to the zoning ordinances and rules in place when the development agreement is executed.

#### Synopsis of SCORC Amendment

The SCORC amendment to Senate Bill 830 would require that a development agreement be consistent with the comprehensive plan and related sub-area plans of the municipality or county in effect when the development agreement is entered into.

#### Synopsis of Original Bill

Senate Bill 830 would allow a governing body or a designee of a municipality or county, after a public hearing, to adopt an ordinance entering into a development agreement with a property owner within its jurisdiction or extraterritorial authority. The development agreement could obligate either party to provide services, infrastructure or facilities. SB830 establishes other standards governing the development agreements.

#### Significant Issues

DFA noted that, currently, developers in New Mexico who are given approval based on a current local comprehensive plan, building codes and zoning still risk having changes required of them at the time of applying for building permits. Most states have updated their statutes to address this situation, short of vesting rights at the time of initial application. SB830 provides development agreements to be finalized based on approval of the local government. It sets development standards that must be met during the life of the agreement, such standards may include use considerations, densities, building sizes, impact fees and any other financial contributions by the property owner, design standards, affordable housing stipulations, and a build-out period before certain standards are applied. During the term of the development agreement, SB830 prohibits the agreement to be affected by changes to zoning or a new zoning ordinance. Only a serious public health and safety threat or a change in standards not in conflict with the agreement are allowed. The agreement is binding on the parties and their successors, such as new owners of property or new elected officials. DFA also indicated that there are large parcels of land (thousands of acres) in the City of Albuquerque's updated master land use plan that are being considered for development, including Mesa del Sol, where development might be facilitated by enactment of this bill.

The Department of Environment (NMED) indicated that SB830 would authorize local governments to exercise greater control of land use and development that could result in greater protection of water quality and drinking-water source areas. Ground-water contamination from liquid waste systems, for example, could be reduced.

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

Relates to HB654.

## **TECHNICAL ISSUES**

NMED stressed it is important that any development agreements be at least as protective as state environmental laws and regulations.

## **OTHER SUBSTANTIVE ISSUES**

According to DFA, the advantages of a development agreement for the developer are:

1. It is assured that the project may proceed as approved over the term of the agreement;
2. Land use rules, regulations, and policies pursuant to terms of the agreement are frozen on the effective date of the agreement;
3. Protection if the community's attitude changes toward the project or when there are new planning commissioners, county commissioners or councilors;
4. Assistance in securing financing and marketing a project.

The advantages for the local government are:

1. It can impose more regulations than permitted by law;
2. Exactions, impact fees, and mitigation measures can be imposed;
3. Land use conditions not set forth in local laws can be recognized;
4. There is no need for legislative authorization for the exaction; and
6. It is not required to approve the agreement, even after lengthy negotiations.

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