

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR SFC DATE TYPED 03/17/05 HB _____

SHORT TITLE Tribal Infrastructure Act SB CS/1015

ANALYST Weber

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	None		Unknown		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
		Unknown		Tribal Infrastructure Trust Fund

(Parenthesis () Indicate Revenue Decreases)

Relates to HB 868

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Indian Affairs (DIA)

No Response Received From

Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

Senate Bill 1015 creates a Tribal Infrastructure Trust Fund as part of the Tribal Infrastructure Act. The bill indicates that the legislature finds poor infrastructure on tribal lands has

contributed to a lack of economic development, uncertain health conditions and social maladies. Funds are may be appropriated to address these issues through consistent improvement of basic infrastructure on tribal lands.

The purposes of the Tribal Infrastructure Act fall into four categories.

- Ensure adequate financial resources for infrastructure development for tribal communities;
- Provide for the planning and development of infrastructure in an efficient and cost-effective manner; and
- Develop infrastructure in tribal communities to improve the quality of life and encourage economic development.
- Encourage partnerships between the state, federal government, Indian nations, tribes and pueblos and private entities in the development of infrastructure for tribal communities

A board is created consisting of seven voting members and eight non-voting members. The board shall meet at the call of the chair or whenever four voting members submit a request in writing to the chair, but not less than twice each calendar year.

The continuing duties of the board are to authorize funding for qualified projects. The projects outlined are for broad-based infrastructure such as but not limited to water related, electrical, communications, roads, and health. Qualified expenses include engineering environmental, land acquisition and legal fees.

A tribal infrastructure trust fund is created. The fund shall consist of money that is appropriated, donated or otherwise accrues to it. Money in the trust fund shall be invested by the state investment officer in the manner that land grant permanent funds are invested. On July 1 of each year in which adequate money is available in the trust fund, an annual distribution shall be made from the trust fund to the project fund in the amount of ten million dollars (\$10,000,000) until the distribution is less than an amount equal to four and seven-tenths percent of the average of the year-end market values of the trust fund for the immediately preceding five calendar years. Thereafter, the amount of the annual distribution shall be four and seven-tenths percent of the average of the year-end market values of the trust fund for the immediately preceding five calendar years

In addition to the trust fund, a tribal infrastructure project fund is created and administered by the Department of finance and Administration. Funds in the project fund are to carry out the provisions of the Tribal Infrastructure Act. Beginning in fiscal year 2006 and in subsequent years, the lesser of one percent of the project fund or one hundred thousand dollars (\$100,000) is appropriated from the project fund to the department of finance and administration for expenditure in the fiscal year in which it is appropriated, to administer the project fund. Any unexpended or unencumbered balance remaining at the end of any fiscal year shall revert to the project fund. Beginning in fiscal year 2006 and in each subsequent year, the lesser of five percent of the project fund or five hundred thousand dollars (\$500,000) is appropriated from the project fund to the Indian affairs department for expenditure in the fiscal year in which it is appropriated to administer the Tribal Infrastructure Act, to pay per diem and mileage as required by that act and for operation of the board. Any unexpended or unencumbered balance remaining at the end of any fiscal year shall revert to the project fund. The balance in the fund is appropriated to DFA to provide loans and grants for qualified projects.

The following legislative oversight is to apply.

- Rules proposed by the board and the department of finance and administration pursuant to the Tribal Infrastructure Act shall be reviewed by the legislative interim Indian Affairs Committee prior to approval;
- The legislative interim Indian Affairs Committee shall be briefed by the board on grant and loan proposals submitted to the board and shall review the list of grants and loans made by the board and,
- The board shall report to the legislative interim Indian Affairs Committee no later than October 1 of each year regarding the total expenditures from the project fund for the previous fiscal year, the purposes for which expenditures were made, an analysis of the progress of the projects funded and proposals for legislative action in the subsequent legislative session.

Significant Issues

The Department of Indian Affairs notes.

As stated in State of the State Address, the Tribal Infrastructure Fund as proposed will: 1) provide NM Indian tribes equal access to the NM capital outlay process; and 2) will give NM Tribes access to investments needed for basic infrastructure development.

The bill provides a mechanism to address the long-standing barriers to infrastructure development in tribal communities. One challenge is that limited state funding available through the state capital outlay process cannot meet large project needs. As an example, the Department of Indian Affairs received 201 capital outlay requests from the 22 NM tribes totaling over \$162 million. These projects were certified by the tribes as being project ready and as their top priorities. The State cannot afford to fund all these needs at one time and may take up to 10 years for a major infrastructure project to be completed due to the limited or piece meal funding. There is a need for other funding sources to assist in order for projects to be completed.

Another example of tribal infrastructure need comes from a DOE study on the Navajo Nation which revealed that close to 40% of homes were without electricity (18,000 homes) – many of these in NM. Based on that study, Congress authorized \$15 million for 5 years which would have electrified almost all if not all those homes. Only a little over \$6 million, however, was ever federally appropriated. The problem is still large and if those homes do not have electricity, more than likely they do not have running water or phone lines.

Another barrier is that Indian tribes have difficulty leveraging funds outside of the capital outlay process. There is a perceived higher risk of private lending to tribal governments because of their sovereignty status and due to jurisdictional and financial issues.

Further, Indian tribes rely primarily on federal funding for a majority of the infrastructure development. However, federal funding for essential sanitation facilities, such as safe drinking water and adequate sewage systems has been diminishing. In fact, the Indian Health Service, the primary provider of these services, has a backlog of 275,000 Indian homes nationally and would require approximately \$1.9 billion to serve existing homes in 10 years. Many of these homes are located in tribal communities throughout New Mexico. With inflation, new environmental

requirements and population growth in Indian communities, the current federal appropriations for infrastructure cannot address the immediate infrastructure needs of tribal communities

Trying to address the standard of living issues in Indian communities through capital outlay has not solved the problem and has proven too expensive for the State. The tribal infrastructure fund design would encourage other funding sources to contribute to qualifying infrastructure projects. Tribal communities will no longer have to rely on the capital outlay process as their only source of funding. Finally, the tribal infrastructure fund would help address the infrastructure needs in a creative and business savvy manner.

POSSIBLE QUESTIONS

Should an appropriation be attached?

MW/yr