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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/1/06  
 LAST UPDATED 2/12/06      HB \_\_\_\_\_

SPONSOR SFC \_\_\_\_\_

SHORT TITLE Tax Increment For Development Act      SB 495/SFCS

ANALYST Francis

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY06	FY07	FY08		
	NFI			
	*see narrative for details			

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates HB 462

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Economic Development Department (EDD)

Attorney Generals Office (AGO)

Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of Bill

Senate Finance Committee substitute for Senate Bill 495 creates a mechanism for providing financing tools for public infrastructure to specific development areas. The “Tax Increment for Development Act” (TIDA) enables local development districts to reserve any incremental revenue from a base revenue that is derived from development projects. The incremental revenue can be spent on public infrastructure for the district. SB 495 establishes the rules and procedures for creating a “tax increment development district” (TIDD) and what authorities a TIDD has for making decisions and allocating resources.

The Senate Finance Committee substituted Senate Bill 495 incorporates language of the Senate Public Affairs Committee amendment. New material is as follows:

1. Changes part of the definition of “public improvements” [Section 3 – R – 19]. Original bill stated: “any other improvement that the governing body determines to be *primarily*

for the use and benefit of the public” (italics added). The substitute removes the word “primarily” which may allow a very liberal interpretation of “public improvement.” (page 8)

2. Changes the word “shall” to “may,” as relates to the formation of the district [Section 4 – A]. This changes the requirement of a resolution from the governing body if a qualified petition is filed. (page 11)
3. Removes the reference to “operations” and “maintenance” costs of public improvements from the tax increment district plan [Section 4 – B – 8, page 13]. The plan would only have to demonstrate that the incremental tax would pay for the cost of construction.
4. Removes Section 6 – F which stated that inadvertent failure to comply with the requirements of notice provisions [those relating to the formation of the district] shall not invalidate the formation of the district. In other words, the notice provisions have to be followed. (page 18)
5. Removes the provision that polling places must be open at least six hours on election day. There are no suggested hours of operation. (page 22)
6. Adds a provision that another election on the formation of a district cannot be held in the twelve months following a failed election. (page 25)
7. Removes a provision that allows the district board to impose fees and charges for a public purpose on real property located in the district and collect administrative fees. (page 30)
8. Adds a provision that tax increment districts do not have the power of eminent domain. (page 32)
9. Adds a provision that a casino cannot be in the district and increment financing cannot be used to finance public improvements related to a casino. (page 33)
10. Removes local option county emergency and infrastructure taxes from the base available for increment financing. (page 36)
11. Allows a district formed by a county access to state gross receipts taxes as municipalities are. (page 36)
12. Directs the State Board of Finance to rule on whether providing state gross receipts taxes to a district is in the best interest of the state. (page 38)
13. Removes a provision that said a change in the location of the polling place will not invalidate a bond election. (page 45)
14. Adds section that requires approval from the NM Finance Authority before any bonds secured by state gross receipts taxes are issued. (page 53)
15. Amends other parts of NMSA 1978 to conform with the Tax Increment for Development Act.

Other amendments adopted by the Senate Public Affairs Committee that are included in the substitute are:

1. Makes any property tax levy last no longer than four years.
2. Allows a rescission vote within the four year period to rescind the property tax levy by one-third of the number of voters who voted in the election.
3. Allows only one petition for rescission in the four year period.
4. Stipulates that any affected taxing entity that is not the district taxing entity cannot dedicate more than 75 percent of the increment to financing bonds.

The result of the amendment is to ensure that there is a way to repeal the tax increment district and protects a portion of the incremental tax going to a taxing authority other than the tax increment district.

The effective date is the date the bill becomes law.

## FISCAL IMPLICATIONS

Currently, there are no TIDDs, so there is no fiscal impact with SB 495. There will be no state impact since the incremental tax revenues are incremental from the base local distributions from the state, except as noted in the Technical Issues section below.

The fiscal impact for local governments is the difference between the average growth in revenue and the baseline revenue. SB 495 designates a baseline revenue equal to the amount of gross receipts tax and property tax revenue in the calendar year preceding the formation of the TIDD plus any additional revenue that may have been generated by changes in the tax rate which the TIDD have no control over. Statewide gross receipts tend to grow between 4 and 4.5 percent annually (and it is different for every area – some TIDDs will have anemic or negative growth possibly) and property values tend to appreciate around 3 percent. Establishing a base line as the preceding year means that the municipality or county where the TIDD is located will miss out on the natural growth of revenues. If enough TIDDs are developed in a particular county or municipality, there will be significant impacts on the county or municipality.

When the TIDDs begin to form, the net impact will be zero, but the distribution will change. In other words, the total revenue distribution will not change; some of the distribution will just be diverted from the local government to the TIDD.

A TIDD is identical in concept to a Tax Increment Financing district (TIF) which has arisen as a new economic development tool across the country. The TIF program is used in virtually all of the states in some form or another and is primarily a tool to redevelop blighted or economically distressed areas. SB 495 makes no distinction as to the economic vitality of a TIDD.

### TRD:

Fiscal impacts are uncertain and could be either positive or negative for existing state and local revenue sources. Although the intention of tax increment financing is to have no impact on existing revenue beneficiaries, the potential for a negative effect arises if the districts attract businesses that would have otherwise located elsewhere in the state. In this case, the proposal results in a shift of tax revenue from existing local and state government beneficiaries to infrastructure financing for the districts. Positive revenue implications are possible if the districts attract businesses that would not otherwise locate in the state. The latter are most likely if the district attracts manufacturing and other export-oriented industries, rather than retail businesses, for example.

### EDD:

The TIF method of financing is used in 47 other states. Denver's Stapleton development is a salient example of applying sales tax generated from commercial properties to pay for streets, sidewalks, street trees, drainage, and other public infrastructure necessary to attract hundreds of millions in private residential and commercial investments.

## SIGNIFICANT ISSUES

**1. Establishment of TIDD.** To establish a TIDD in county or municipality, interested parties must file a petition signed by at least 50 percent of the property owners in the proposed district. The local governing body (eg., city council, county commission) then adopts a resolution to form the district that includes, among other things, the geographic boundaries and the rationale for forming the TIDD.

A TIDD can be established in either a county or a municipality. The incremental revenue from gross receipts taxes defined in the bill is derived from the revenue associated with either the county or the municipality. In other words, if a TIDD is approved by a municipality, the county revenues are not affected. This is not the case with property tax which will impact municipalities and counties regardless of the body that approved the TIDD. School districts are not included in the definition of “governing body” and so the property taxes that will go to these entities will not be affected.

The TIDD must be approved by the governing body (ie, county or municipality) so the TIDD should fit into their master infrastructure plans for parks, streets, etc.

The TIDD would have the ability to levy a property tax up to 5 mills. **The amendment stipulates that this levy can only be for four years.**

**2. Tax Increment Development Plan.** The Tax Increment Development Plan (“Plan”) is a necessary part of creating the TIDD. The plan should include the following:

1. a map of the boundaries
2. the time needed to complete the project
3. estimate of the cost of the project
4. whether the project will be financed with gross receipts tax increment bonds or property tax increment bonds or both
5. estimate of the incremental revenue generated and how the revenue will be allocated
6. the land necessary for the project
7. the number and type of jobs created
8. the affordable housing created
9. any public school improvements
10. innovative planning techniques that will be used
11. level of private investment.

**3. Elections.** Once the Plan is approved by the governing body, there can be an election to create the TIDD, elect a board, and begin the financing of the Plan. If however the petition to create the TIDD has been signed by every property owner in the TIDD and it waives the right to an election, the governing board can create the TIDD and appoint the board.

**The amended bill allows for a rescission election for any property tax levy associated with the TIDD and stipulates that the levy can only be in place for four years.**

**4. Incremental Gross Receipts and Property Tax.** The incremental revenues are the amount of revenues generated within the boundaries of the TIDD less the amount generated during the base year. In other words, the amount of revenue, either property or gross receipts, is kept constant at the base year regardless of whether there was growth before. Likewise, if the development is a new development, the base is effectively zero or very close to zero and so almost all revenue will go to the TIDD. There is an allowance for increases in the tax rate in the larger area.

**5. Constitutional Issues On Bonding.** EDD has indicated that there have been constitutional questions about the bonding powers in previous legislation. SB 495 appears to resolve the issue of putting a bond to a vote except that there’s a provision that allows elections to be waived if the petition is signed by all property owners in the district. It is unclear how the Attorney General will view this section. (Section 8-B, page 20).

**6. Other Significant Issues.** Prior to the issuance of any bond based on the incremental reve-

nues, the property owners within the district must contribute 20 percent of the costs of the public infrastructure unless the area is covered under the Metropolitan Redevelopment Code. These costs may be reimbursed with the proceeds of the incremental revenue.

## **TECHNICAL ISSUES**

Page 34: Section 14-B-7 refers to the state portion of the gross receipts tax as a possible source for the incremental tax distributed to a TIDD formed by a municipality. State gross receipts taxes are not referred to in the county section. Section F (p. 36) indicates that state gross receipts can be included in the increment if approved by the Board of Finance. It is unclear if the Board of Finance has the authority to approve the appropriation of gross receipts tax revenues.

Section 8-A-2 calls for the election of district board members. Section 10-B indicates that the board is appointed by the governing body or is the governing body but no reference to the elected district members.

Section 19-B (page 50) does not specify how the property owners in a TIDD will be reimbursed if the area is not a metropolitan redevelopment project. It should be clear that they will be reimbursed after debt service payments are met.

### **TRD:**

Section 12, Subsection B provides that districts are not subject to the Procurement Code, even though they are political subdivisions of the state and have most powers of a municipality.

The Department does not currently collect gross receipts tax by district. The bill states that an estimated increment will be stated in the increment development plan, but does not describe whether the calculation of base GRT revenue is computed once or is to be updated on a yearly basis. The bill also does not state who is to determine this amount and how it will be certified. This process is crucial to the functioning of the entire proposed program.

The bill does not state if the district will receive funds from increases in the local option gross receipts tax rate.

Intent of proposed Section 16 1(C) is unclear. The section states:

Upon general reassessment of taxable property valuations in a county, including all or part of a tax increment development area in which a property tax increment has been pledged for property tax increment financing, the portions of valuations for assessment shall be proportionately adjusted in accordance with that reassessment or change.

## **ADMINISTRATIVE ISSUES**

TRD reports that the administration of the gross receipts tax provision would be difficult, time consuming and expensive. Currently, TRD has no accessible information to determine where a business is located other than the municipality or county. Getting the information would require major revisions to forms and systems.

## **OTHER SUBSTANTIVE ISSUES**

The ability to waive the election for the creation of the board on the petition of the landowners leaves out the other residents and may pose constitutional questions.

The ability to have the district board director serve as director of multiple boards may appear to be a conflict.

AGO response (**note: not an AGO decision or ruling**):

There needs to be a clearer explanation why the bill is needed when the state already has the “Public Improvement District Act” in NMSA 1978, Section 5-11-1 to –27.

It is unclear whether the citizens of the governing body and the governing body have received a bargained for exchange in giving up tax revenues and paying additional taxes in exchange for the District’s services. If not, this might be a violation of the anti-donation clause of the state Constitution (except if this bill is seen as implementing legislation and done in accord with Article IX, Section 14(D)).

Section 8(G) is very confusing. Do non-qualified electors get their vote counted?

Policy questions like these should be considered: (a) Should municipalities and counties out-source their responsibilities of building infrastructure? (b) Why should the governing body have the option to appoint itself as the District board? (c) Since the Districts are not subject to the Procurement Code, is this an end run around procuring constructive services via open procurement? (d) Should municipalities and counties out-source their rights to impose and collect tax revenues?

TRD provides an example of tax increment financing for a blighted area (although SB 495 does not establish financing for just blighted areas):

**Illustration: Tax Increment Financing<sup>1</sup>**

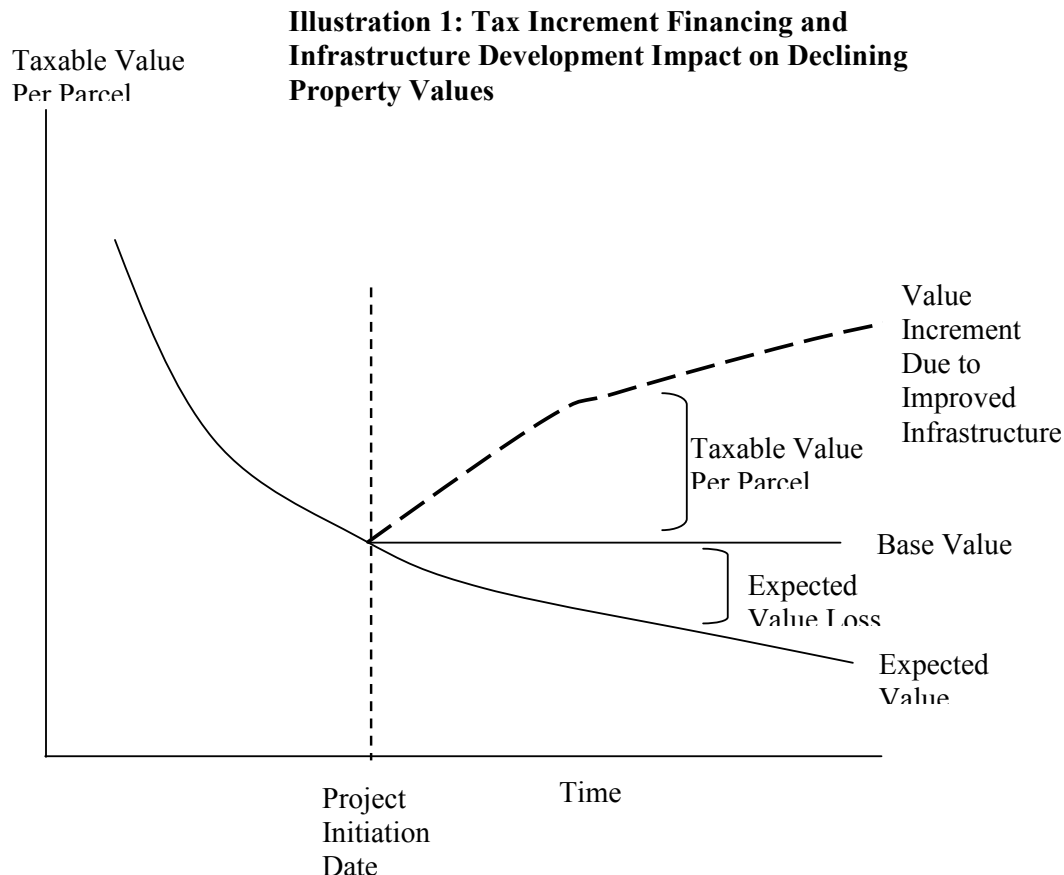
A traditional case of tax increment financing in which urban blight causes real property values to fall is portrayed graphically in Illustration 1. Due to the declining land values, lack of jobs and associated problems, the associated municipality designates the area a TIF district. Base property values are frozen, as represented by the horizontal line. The tax base available to the city and all of the other taxing jurisdictions remains constant. The valuation increment -- shown by the rising line -- grows as new infrastructure attracts new industry to the area and taxable value of new and existing structures expands. The resulting tax increment is used to pay off public indebtedness associated with the project. Once the infrastructure is paid off, the project is complete, and the value new value is taxed by the various jurisdictions – and residents of the taxing jurisdictions experience higher degrees of income than existed prior to development of the district. One measure of benefits of the project consists *roughly* of the difference between the line entitled "value increment due to improved infrastructure" and the one entitled "expected value" multiplied by tax rates.

To understand why TIF financing may be less successful than suggested by Illustration 1, simply consider some alternative configurations of the associated lines. If, for example, the expected value of existing properties is increasing rather than declining as suggested in Illustration 1, net benefits of the project would be less than shown in Illustration 1. In addition, if business attracted to the tax increment area is financed by industrial revenue bonds, the re-

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<sup>1</sup> This discussion is taken largely from David Swenson and Liesel Earthington's paper entitled "Do Tax Increment Finance Districts in Iowa Spur Regional Economic Development and Growth?" Department of Economics, Iowa State University, April 2002. See [http://www.econ.iastate.edu/research/webpapers/paper\\_4094\\_N0138.pdf](http://www.econ.iastate.edu/research/webpapers/paper_4094_N0138.pdf)

sulting new construction would not be subject to taxes, thus limiting the tax increment. Increases in the "value increment to new structure" would also be diminished, thus decreasing net benefits to the district. Moreover, as indicated above, the new businesses and residents may simply come from neighboring jurisdictions with the result that the increase in value in the district is offset by decreasing value elsewhere in the municipality and no net benefits accrue to the municipality that initiated the district.<sup>2</sup>



**ALTERNATIVES**

In reporting the jobs associated with a Tax Increment Development Plan, the construction jobs associated with a project could be excluded from the report. This way only jobs created by increased economic activity due to the project will be counted rather than the construction jobs.

TRD has noted that allowing a new local option gross receipts tax that could be used in the TIDD may accomplish the same goal of providing dedicated revenue to a TIDD. This would, however, be an increase in the taxes on those in the TIDD.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

<sup>2</sup>For a description of some of the literature suggesting that TIF is sometimes ineffective, please see the paper referenced above by Swenson and Earthington of Iowa State University, as well as: "Tax Increment Financing: Private Financing at the Expense of Local Community", by Danny Santavisci, Illinois State University: <http://iilt.ilstu.edu/critique/spring2005docs/TIFbyDannyfinalformat.pdf>; "The First Comprehensive Report on the State of Tax Increment Financing in Chicago", by Chris Swartz, published by "The Neighborhood Capital Group" <http://www.ncbg.org/documents/tifreport.pdf>; and "The Effect of Tax Increment Financing on Economic Development" by Richard F. Dye and David F. Merriman, Institute of Government and Public Affairs, University of Illinois, Chicago, 1999 <http://www.igpa.uiuc.edu/publications/workingPapers/WP75-TIF.pdf>.

Duplicates HB 462.

**POSSIBLE QUESTIONS**

What will the impacts be on school districts? Will there be a disincentive to invest in schools within the TIDD by a school district if those incremental revenues are given to the TIDD?

How does the TIDD affect a community's master plan for infrastructure?

What are the county/municipality's responsibilities to the TIDD?

Does the State Board of Finance have the ability/authority to approve a resolution diverting gross receipts tax revenues to a TIDD?

NF/mt:nt