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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/25/07  
 LAST UPDATED 2/10/07      HB 215/aHBIC

SPONSOR Madalena

SHORT TITLE Private Equity Funds For Tribal Investors      SB \_\_\_\_\_

ANALYST Francis

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Board of Finance (BOF)  
 State Investment Council (SIC)  
 Office of Indian Affairs (OIA)

### SUMMARY

#### Synopsis of HBIC Amendment

The House Business and Industry Committee amended House Bill 215 in two ways. First, by changing the word “and” to “or” on page 3, line 19, corrects a technical issue. Second, the amendment changes the definition of a tribal entity to limit eligibility to tribal entities with at least \$5 million in investment assets. This change means that only those entities with sufficient investment assets to be able to manage the risk associated with private equity investing are eligible.

#### Synopsis of Original Bill

House Bill 215 allows the federally recognized Indian tribes, nations and pueblos to invest in NM private equity funds that receive State Investment Council (SIC) investments. This would allow tribes to invest in the New Mexico SIC Private Equity Program, a program that invests in NM companies with the expectation of higher than normal returns but also as an economic development tool for small companies in need of venture capital investment.

## FISCAL IMPLICATIONS

### **The HBIC amendment does not change the fiscal analysis.**

The inclusion of tribes as investors should have no impact on the fund or the investments. The general partner, Sun Mountain, along with the SIC, directs the investments for the fund. The tribes would get to share in any returns generated by the funds proportional to their investments.

The State Investment Officer (SIO) may invest in New Mexico private equity funds, funds that have a New Mexico office and staff and that invest at least the level of SIC's commitment in NM companies. The mechanism the SIC currently uses for direct investments is The New Mexico Co-Investment Partnership, a New Mexico private equity fund managed by Sun Mountain. Sun Mountain is the fund's general partner, while also acting as the SIC's advisor for New Mexico private equity fund investments. The SIC's direct investments in New Mexico companies may represent no more than 51% of the investment capital in a business and must be made in conjunction with one or more qualified co-investors. HB215 expands the definition of qualified co-investor to include tribes.

## SIGNIFICANT ISSUES

The bill allows tribes to be investors in the fund but it will still be up to Sun Mountain, the general partner of the fund, to accept investments other than those from the SIC from qualified investors. The definition of accredited investor, according to the US Securities Act Of 1933, is:

- (i) a bank as defined in section 3(a)(2) whether acting in its individual or fiduciary capacity; an insurance company as defined in paragraph (13) of this subsection; an investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act; a Small Business Investment Company licensed by the Small Business Administration; or an employee benefit plan, including an individual retirement account, which is subject to the provisions of the Employee Retirement Income Security Act of 1974,<sup>1</sup> if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is either a bank, insurance company, or registered investment adviser; or
- (ii) any person who, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial matters, or amount of assets under management qualifies as an accredited investor under rules and regulations which the Commission shall prescribe.

“Person” is further described as “an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof.” These definitions laid out in the federal law would likely excluded tribal entities though not necessarily individual members of a tribe or a tribal corporation. HB215 would expand the scope of eligible investors in the NM private equity program to include tribes.

According to SIC, expanding eligibility will not change any of the financial requirements of an investor but will allow investment from entities that are excluded because of the definition passed down by the federal government. The HBIC amendment satisfies SIC concerns about financial requirements.

Office of Indian Affairs reports that “HB215 could encourage Indian Tribes, Nations and Pueblos to participate more actively with New Mexico private equity funds. HB215 could also provide an avenue to support economic development and an opportunity for Indian tribes, nations and pueblos to gain higher return in their investments.”

### **TECHNICAL ISSUES**

Office of Indian Affairs:

As currently drafted, the amendment would allow “New Mexico private equity funds” to accept investments from any federally recognized Tribe in the Nation, wherever located, and still qualify for this investment opportunity. The intent of this amendment may be to encourage cooperation between NM Tribes and New Mexico businesses. The standard jargon used to limit activities and opportunities to NM Tribes is “federally recognized Indian Tribes, Nations, and Pueblos located partially or wholly in the State of New Mexico.”

### **ALTERNATIVES**

SIC reports that the bill as proposed could create confusion and even litigation because of the word “and.” They recommend changing the “and” before “federally recognized” to “or”:

The affected language defining “New Mexico private equity fund” reads: “...(e) accepts investments only from accredited investors as that term is defined in section 2 of the federal Securities Act of 1933, as amended (15 USCA Section 77 (b)), and rules and regulations promulgated pursuant to that section, and federally recognized Indian tribes, nations and pueblos.”

NF/mt:csd