F I S C A L   I M P A C T   R E P O R T

ORIGINAL DATE 2/25/07
SPONSOR Lujan, B. **LAST UPDATED** 3/02/07 **HB** 1180/aHTRC

SHORT TITLE Public-Private Facility Bond Financing **SB**

ANALYST Schardin

REVENUE (dollars in thousands)

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

(Parenthesis ( ) Indicate Revenue Decreases)

Conflicts with HB 330, HB 968, SB 313

SOURCES OF INFORMATION
LFC Files

Responses Received From
Department of Finance and Administration (DFA)
Higher Education Department (HED)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of HTRC Amendment

By changing the definition of a "local government", the House Taxation and Revenue Committee amendment to House Bill 1180 limits participation in the provisions of the public-private facilities revenue bond act to "home rule" municipalities, municipalities with a population of at least 25 thousand in the most recent decennial census, and class A and H counties.

Municipalities with populations over 25 thousand include Alamogordo, Albuquerque, Carlsbad, Clovis, Farmington, Hobbs, Las Cruces, Rio Rancho, Roswell, and Santa Fe. Additional home rule municipalities are Gallup and Grants. Class A and H counties are Bernalillo, Doña Ana, San Juan, Santa Fe, and Los Alamos.

Synopsis of Original Bill

House Bill 1180 creates the public-private facilities revenue bond financing act. The purpose of the act is to provide a program to help local governments acquire and finance public facilities to be used in partnership with private entities. A "private partner" is defined as a corporation, limited liability company, partnership, joint venture, syndicate, association or other person engaged in an "eligible enterprise."

An "eligible enterprise" is defined as 1) an industry that manufactures, processes or assembles agricultural or manufactured products, 2) a commercial enterprise for storing warehousing, distributing or selling agricultural or mining products, 3) a business involved in supplying services, office space or other facilities to the general public or to governmental agencies or a specific industry, 4) a business that produces film or other visual or electronic media, or 5) a business that develops, redevelops or improves real property.

The act will allow local governments to issue bonds to finance all or part of the costs of a "project," which is defined as land and land improvements, buildings and building improvements, machinery and equipment, operating capital and other personal property necessary to complete the project. Local governments will be allowed to acquire, own, lease, or otherwise dispose of its interest in a project. Bonds issued pursuant to the act will be exempt from state tax, will not be general obligations, and may be issued for terms of up to 30 years.

Bonds will be payable from "net project revenue," which is defined as revenues derived from the lease, operation, sale or other disposition of a project after deducting reasonable costs of operating and maintaining the project. Local governments may also choose to repay bonds from the municipal share of state gross receipts tax collections, municipal local option gross receipts taxes, the first or third 1/8 increment of the county local option gross receipts tax, or the county infrastructure or county capital outlay gross receipts tax.

Bond proceeds will be restricted for use only for the purpose for which the bonds were issued and for costs of acquisition, construction or other project improvement. Uses include construction, architectural, engineering, appraisal and attorney fees, the project's purchase price, the costs of extending utility service to the project, bond issuance expenses, and bond interest.

Prior to issuance of bonds, a local government will be required to determine the amount necessary in each year to pay bond principal and interest, the amount necessary in each year to pay into any reserve funds deemed necessary, and the estimated cost maintenance cost for projects for projects that the local government will be responsible for maintaining.

Issuing bonds will require a local government to adopt an ordinance that declares the bonds necessary. The ordinance must be approved by 75 percent of a municipality's governing body or 66 percent of a county's governing body. The local government must also determine that the project will generate net project revenues sufficient to pay principal and interest of the bonds.

Local governments that issue bonds will be allowed to lease the project to a private partner if the rents provided in the lease will be great enough to pay principal and interest on project bonds, accumulate and maintain any reserve deemed advisable, pay the costs of maintaining and insuring the project, and provide a revenue stream to the local government that is adequate to serve its interests in doing the project. Upon expiration of the lease, the project may be sold to the leasing private partner of its fair market value.

The bill also provides that bonds issued pursuant to the new act may be refunded by a local government at any time.

Projects entered pursuant to the new act will be exempt from the procurement code. Instead, the projects will be subject to similar provisions deemed necessary by a local government. Local government property related to this new act will also be exempt from state statutory restrictions on disposal of property. Finally, local governments leasing projects pursuant to the new act will not require approval from the State Board of Finance.

Because the bill has no effective date, its provisions will become effective 90 days after the legislature adjourns on June 15, 2007.

FISCAL IMPLICATIONS

The bill does not change the amount of local option gross receipts tax New Mexico's local governments are authorized to impose. The bill does allow local governments to increase the amount of debt they carry.

SIGNIFICANT ISSUES

DFA notes it is unclear whether income from the bonds issued pursuant to the new act will be exempt from federal taxation. If projects built with the bonds authorized in this bill received federal tax-exempt status projects will be less expensive to service.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 1180 conflicts with House Bill 330, House Bill 968 and Senate Bill 313 which also amend Sections 13-6-2 and 13-6-2.1 NMSA 1978.

OTHER SUBSTANTIVE ISSUES

Due to the dependence of some local economies on a few industries, local gross receipts tax collections may be volatile. Local governments could encounter problems making debt service payments if they rely too heavily on gross receipts tax revenues instead of net project revenues.

SS/nt:csd