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

SPONSOR SFC | **ORIGINAL DATE** 2/25/07 | **LAST UPDATED** 3/16/07 | **HB**

SHORT TITLE Economic Development and Loan Guarantees | **SB** CS/1130/aSFC/aSF1

ANALYST Francis

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
30,000.0		Non-Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	($0.1)		Recurring	General Fund
	* See Narrative – Future impact is $30 million reduction of gross receipts tax revenues			

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to HB1190.

SOURCES OF INFORMATION
LFC Files

Responses Received From (reporting on HB1190 a similar bill)
New Mexico Finance Authority (NMFA)
Economic Development Department (EDD)

SUMMARY

Synopsis of SFl Amendment

The committee substitute for Senate Bill 1130 as amended was amended on the Senate Floor to include a provision that an applicant under this program will waive state and federal confidentiality laws and provide information to the state Board of Finance, the Legislative

Finance Committee and the NM Finance Authority Oversight Committee. That information shall include the identities and net worth of stockholders holding more than five percent of the applicant entity and the net worth of the applicant entity.

Synopsis of SFC amendment

The amendment limits the state and local gross receipts attributable to the project to 75 percent and the compensating tax to 60 percent. The amendment also requires the local government to forego 75 percent of the local gross receipts taxes and those will be distributed into the fund.

Synopsis of Original Bill

The Senate Finance Committee substitute for Senate Bill 1130 amends the Statewide Economic Development Act (SWEDA) to provide a vehicle to guarantee loan bonds for projects authorized pursuant to SWEDA. The substitute appropriates $30 million from the general fund to be used to guarantee loans that will be replaced as gross receipts tax revenues are deposited in a special account that can guarantee the loans.

Under the proposed language a special account is established within the economic development revolving loan fund that is funded by a contingent appropriation from the general fund operating reserve and distributions of gross receipts tax revenues from projects receiving loans. At the beginning of a project, there will be insufficient GRT revenue from the project to adequately guarantee the bond or loan so a contingent appropriation is made in the amount sufficient to provide this guarantee. As GRT is deposited in the fund, the contingent appropriation decreases until there is a sufficient balance to guarantee all outstanding loans. The maximum amount of outstanding loans is $30 million.

NMFA must provide the amount of guarantee and amount of contingent liability for any project guaranteed under this program and the project must be approved by the legislature and authorized by law. The project also must be reviewed by the Legislative Finance Committee and the NMFA Oversight Committee. This provision is discussed in more detail in Technical Issues below.

This substitute removes SIC from the mechanism and relies on the contingent appropriation for the guarantee. Under current law, the guarantee is provided by an appropriation from the legislature. NMFA received an appropriation of $10 million in 2005 and has reported that they have almost reached capacity. They have requested an additional $30 million for the fund. Presumably the structure proposed by the substitute will mean that NMFA will no longer rely on appropriations from the legislature.

A temporary provision of SFC substitute for SB 1130 allows NMFA to immediately guarantee a loan for tilapia aquaculture and hydroponic vegetable production project developed by the NM Tilapia Corporation. The bond for this project cannot exceed $30 million.

EDD (in response to SB1130 original):

> This project is an expansion of a New Mexico based company that will be a full scale tilapia food processing facility. The proceeds would be used for buildings, land and infrastructure for the tilapia processing facility. The project would still have to approved by the NMFA board under the SWEDFA act. NMFA would provide the due diligence to

the NMFA board and the economic development department would provide the cost-benefit analysis and determine the economic development benefits as required under SWEDFA.

There is no effective date so if enacted the effective date would be June 15th, 2007. Any project, including the project proposed here, would still require NMFA, State Board of Finance, LFC and NMFA Oversight Committee approval and/or review.

FISCAL IMPLICATIONS

The contingent appropriation of $30 million contained in this bill is a NON-RECURRING expense to the GENERAL FUND. This appropriation comes from the operating reserve, which has a balance of $359 million as of the end of FY06 and is projected to have an ending balance of $70.9 million at the end of FY07. While it is unclear in the language, this appropriation will become essentially untouchable since it will be a legal guarantee on an issued bond.

The appropriation amount does not actually get expended except in the case of default on a bond by an NMFA project. The amount of the "booked" appropriation would show up on the general fund financial summary as a cost to the general fund in FY07 and then each year some share of gross receipts revenues attributed to the project will replace the amount. Below is an example of how the appropriation might look in the LFC general fund financial summary. The FY08 positive entry represents 75 percent of the tax revenue generated by the first year of the project which offsets the appropriation. This is not revenue however but a decreased appropriation the distinction being subtle. The gross receipts tax revenue goes to a special account at NMFA that eventually will completely replace the contingent appropriation.

EXAMPLE OF HOW THE CONTINGENT APPROPRIATION WILL BE ACCOUNTED FOR IN THE GENERAL FUND FINANCIAL SUMMARY:

	Actual FY2006	Estimated FY2007	Estimated FY2008
OPERATING RESERVE			
Beginning balance	330.1	359.2	40.9
Appropriations	(1.7)	(10.1)	(1.5)
SWEDA Loan Guarantee	-	(30.0)	0.9
Transfer to ACF	-	(40.0)	-
Transfers from/to appropriation account	152.0	(238.2)	13.6
Transfers to Tax Stabilization Reserve (3)	(121.3)	-	-
Ending balance	359.2	40.9	53.8

The local governments in Hidalgo County will be required to distribute 75 percent of the local option gross receipts to the loan guarantee account. Since local governments rely on gross receipts taxes more than the state this could have a significant impact for these governments. Hidalgo County only collects about $250 thousand in gross receipts tax annually and if this project is the scale that is considered they will likely have significant trouble providing enhanced or additional services without the additional taxes.

Currently, NMFA relies on appropriations from the legislature to guarantee the EDRF program.

In 2005, the legislature appropriated $10 million to NMFA to start this program and guarantee projects. This is referred to as the Smart Money program and NMFA is seeking $30 million this year of funding. It is not clear if this will legislation will mean that NMFA will no longer need appropriations.

TECHNICAL ISSUES

The Office of the Attorney General reports that provisions regarding legislative interim committee oversight may be "an impermissible delegation of authority to a subcommittee." Legislative Council Service indicated that this may be permissible since it is similar to budget adjustment request review delegated to the LFC. The AG feels that the BAR authority is somewhat protected due to the procedures and policies (e.g. deadlines and specific scope) that are established governing BAR authority. No such provisions exist for this legislation.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 2, the general appropriations act, has already been passed by both houses and combined with the capital outlay plan, including SB710, SB611, and SB867, the FY08 reserve level is 10 percent. The executive and the legislature have indicated that this target must be met to provide adequate reserves for the future. This contingent appropriation would change the FY08 reserves to fall below the 10 percent level.

House bill 1190 is a duplicate of the original SB1130 and also includes the Tilapia project.

Senate Bill 1152 is contingent on the passage of SB1130 or HB1190 and contains an appropriation for $25 million for a solar facility. As proposed, this substitute does not contain an appropriation for this project and with the maximum set at $30 million for loan guarantees cannot include this project.

SIGNIFICANT ISSUES

In the particular case of the tilapia processing facility, which is a temporary provision in the substitute and is also included in the current HB1190 language, the legislature would appropriate $30 million from the operating reserve contingent on any default by the processor. NMFA would place a project revenue bond with investors the proceeds of which would go to pay for land, buildings or infrastructure for the processor. The NM Tilapia Corporation would pay the holders of the bonds according to the bond indenture. As they progress, presumably they will begin paying gross receipts taxes which will be diverted to the special account. As GRT is deposited into the special account, the contingent appropriation decreases until there is sufficient funds in the account to guarantee the bond. If the bond defaults, the special account will make payments to the investors who hold the bond.

At this time, little is known about the NM Tilapia Corporation. There is a company in Hidalgo County called AmeriCulture which produces tilapia fry (like tadpoles) to growers and researchers already and presumably this operation will be connected in some way. While economic development is badly needed in that part of the state, $30 million is an enormous amount of state money put at risk for a single project. To justify this investment, particularly with an emergency clause, more information is required about the credit worthiness of the project participants, the other investors lined up, and a market analysis of tilapia production that confirms the long term viability of a project of this size. Such a study could be amended as a requirement of this loan guarantee.

Information Regarding Tilapia and Aquaculture

NMSU Circular 543 on Aquaculture (http://cahe.nmsu.edu/pubs/_circulars/circ543.html)

> Tilapia are similar in appearance to bluegill. Tilapia were imported from Africa to many parts of the world. Production of tilapia is centered in the southern U.S., the Caribbean, and Central America. In the U.S., tilapia also are cultured in colder climates using indoor recirculating systems or geothermal spring water.
>
> Tilapia are a warm water fish. They are disease resistant, tolerant of poor water quality, and grow well in most aquaculture systems. Culture methods ranging from open ponds to cages to water recirculating systems have been used to rear tilapia successfully. Tilapia also have been cultured successfully in saline water.
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> Tilapia will reproduce in most aquaculture systems. Reproduction is both a benefit and a hindrance to production of this species. It is a benefit because fingerling production is simplified. It is a hindrance because tilapia spawn frequently. The high spawning frequency slows growth and the increased fish mass due to the fry in the culture unit leads to stunting in the population.
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> Markets for tilapia are growing worldwide. U.S. tilapia production in 1991 was approximately 9 million pounds and has increased steadily since that time. Producer markets are available in niche markets or, if production is large enough, in larger outlets.

Southwest Technology Development Institute
(http://geoheat.oit.edu/bulletin/bull23-4/art2.pdf)

> **Geothermal Aquaculture**
> The AmeriCulture Fish Farm at Cotton City in southwest New Mexico raises tilapia from eggs produced on site. AmeriCulture markets and sells a disease free Tilapia fry to growers and researchers nationwide for grow out to full size. Tilapia is a fish that is growing in popularity for its taste. In recent years, local Red Lobster seafood restaurants have added Tilapia to the menu. Geothermal offers several advantages for fish culture. For instance, AmeriCulture is heated at much lower costs than fossil fuels with a down hole heat exchanger installed in a 400-ft depth well. Many species have accelerated growth rates in warm water. In addition, the geothermal water can be used as a growth medium; thereby, adding to the agriculture receipts in the state without consumptive use of valuable freshwater supply.

ALTERNATIVES

As this project has not come before any committee in the interim, a possible alternative or amendment would be to require EDD or NMFA to conduct a feasibility study on the project that includes a market analysis of the tilapia industry. Either agency then should report to an appropriate interim committee for recommendations for the 2008 legislative session.

Another possible safeguard would be to require a certain match of private investment to the loan guarantee amount. For example, the State Investment Council does not invest more than 10 percent of the amount available for NM program private investment in any one company and cannot own more than 51 percent of a company (with exceptions for bankruptcy).

SIC NM Program Investment Policy:

> [SIC can only invest in] New Mexico companies that are receiving equity investments in conjunction with qualified investors or have received equity investments from qualified investors who have signed a cooperative investment agreement with the SIC. A "cooperative investment agreement" is defined as an agreement between the SIC and co-investor(s) that, at a minimum, includes a statement by the co-investor(s) acknowledging that they are parties with "demonstrated abilities and relationships in making investments in new, emerging or expanding businesses" as required in Section 7-27-5.15(E)(1) NMSA 1978". The agreement may be in the form of a term sheet, stock subscription agreement, participation agreement or other form of document.

NF/nt