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

		ORIGINAL DATE	1/25/08		
SPONSOR	Silva	**LAST UPDATED**	2/6/08	**HB**	276/aHBIC
SHORT TITLE	SunCal Tax Increment District			**SB**	
				ANALYST	Francis

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY08	**FY09**	**FY10**		
	* See Narrative.		Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to SB 398, HB451, SB434

SOURCES OF INFORMATION
LFC Files
Department of Finance and Administration (DFA)
DevCo applications to Board of Finance and Bernalillo County
NM Voices for Children
New Mexico Finance Authority (NMFA)

Responses Received From
Economic Development Department (EDD)
Taxation and Revenue Department (TRD)
DFA

SUMMARY

Synopsis of HBIC Amendment

The House Business and Industry Committee amended House Bill 276 in the following ways:

1. Changed references to “SunCal” to “Westland DevCo, LP, Upper Petroglyph,” the correct legal name of the TIDD.
2. Restricted the bonds issued to those issued in districts 2, 3, 4 and 8.
3. Made a technical change to refer to “tax increment plan” rather than “project.”
4. Adds a section that requires NMFA to review any amendments to the tax increment development plan that affects the projected revenues, use of proceeds or issuance of bonds before any bond is issued.
5. Adds a section that requires NMFA to review the plan to ensure that tax increments for any district cannot be used for more than 28 years and that substantial improvements

have been completed within the district prior to the issuance of bonds. NMFA will look at the reimbursements to verify the infrastructure was appropriate.

6. Changed the time frame for the bond authorization from unlimited to 50 years.
7. Clarified that roads for public safety are part of the prohibited capital outlay.

DevCo has provided LFC with a new analysis reflecting the NMFA and HBIC actions.

Synopsis of Original Bill

House Bill 276 authorizes the DevCo (a.k.a. SunCal) Tax Increment for Development District (TIDD) to issue bonds up to $629 million (adjusted for inflation – see "Significant Issues" below for more detail) pursuant to 5-15-21 NMSA 1978. The bill contains contingent language requiring NMFA to determine the proceeds of the bonds will be used in accordance with the development plan, to review the master indenture prior to any bond issue, and to review any proposed amendments to the master indenture.

HB276 also has a prohibition of capital outlay except for "buildings or facilities" owned by the state or one of its agencies, institutions or political subdivisions and that are for public schools, higher education, cultural purposes, public safety or other public purposes. Economic development projects are exempted from the prohibition.

This allows the TIDD to use incremental revenue from the state gross receipts tax (GRT) as set by the Board of Finance on January 14, 2008. The Board of Finance approved the distribution of 50 percent of the incremental revenue generated by the TIDD in four of the nine TIDD districts.

The effective date is July 1, 2008.

SUMMARY OF WESTLAND DEVCO PROCESS

In December, 2007, the Bernalillo County Commission approved the nine districts that make up Westland DevCo TIDD. This action locks in tax year 2006 as the base year for determining both the property and gross receipts tax increments. The commission did not approve anything else at this time, leaving a question about the process open: Should the approval of the formation of a TIDD take place separate from the dedication of a tax increment and the approval of a Master Development Agreement? The formation of the districts is the step that locks in the base year for determining the tax increment for the TIDD. The problem arose at the Board of Finance meeting where the board was asked to make a determination of the state gross receipts tax increment without knowing (a) the county's participation, (b) a final master development agreement, or (c) the makeup of the TIDD board. The Bernalillo county ordinance allowing TIDDs states that the TIDD board be comprised of the Board of Commissioners unless the Commissioners decide to appoint the board and they can appoint the developer to the board. There is a draft master development agreement on the developer's website www.tiddfacts.com and Westland DevCo representatives report that the county has adopted this version. The resolution passed at the December meeting of the Board of Commissioners indicated that the commission approved the master development agreement subject to final changes by the chair and bond counsel but there has been no final version posted and requests for the final document have gone unanswered.

On January 14, 2008, the Board of Finance met and approved 50 percent of the state gross receipts tax increment for four of the nine districts. BOF made its approval contingent on at least $125 million participation from Bernalillo County since the County had not acted by the date of the BOF meeting. Two county commissioners testified on behalf of the TIDD.

On January 22, 2008, Bernalillo voted unanimously to dedicate 30.77 percent of the county GRT and 10 percent of the property tax, committing the county to just above the level required by BOF but less then what was previously considered. The original request was for 22 percent of the GRT and 50 percent of the property tax. In counties, the property tax is a much more significant revenue source than the GRT and so the new shares actually lowered the County's commitment to the project. The county also authorized DevCo to impose a property tax of no more than 5 mills (a five mill levy is a $5 levy on each $1,000 of assessed value).

On January 28, 2008, the New Mexico Finance Authority (NMFA) voted on a resolution reporting that it had reviewed the financing and found it to conform with the plan with the caveat:

> Because the project is still in early stages of development, many key elements of the plan are still preliminary—the developer does not yet have a single tenant for any of its districts—and therefore bond documents have not been drafted and certain key issues not yet determined. As such, NMFA cannot determine with any certainty that bond proceeds will be used in accordance with the Plan at this point and recommends that NMFA review and approve certain key documents prior to the initial issuance of bonds in each of districts 2, 3, 4, and 8. (NMFA Memorandum, January 28, 2008)

NMFA's role is limited to this: the agency makes no recommendation. NMFA's resolution indicates the $629 million is appropriate since the infrastructure "outside" the four BOF approved TIDDs provide indirect benefit to the four approved TIDDs. The total infrastructure of the plan is $629 million so the assumption is that all of the infrastructure is integrated and should be financed. Sixty percent of the infrastructure proposed is "tract backbone" infrastructure and if this is the layout of the districts, particularly the residential districts, then it is unclear why this type of infrastructure provides a benefit to the industrial areas. **The HBIC amendment reflects NMFA's recommendations.**

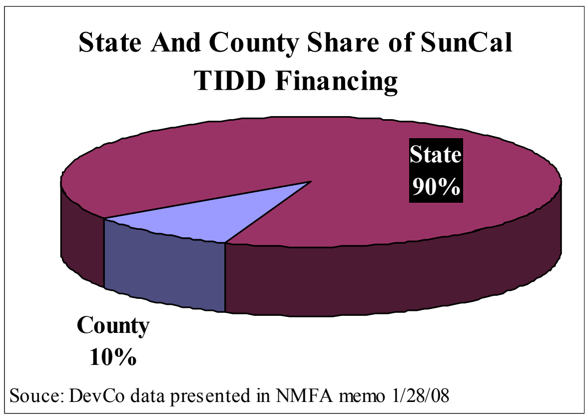
To date, there is still no master development agreement in place and the makeup of the TIDD board is unknown. In the Mesa del Sol process, a master development agreement was in place prior to legislative action but it was subsequently amended by the City and the developer. After the legislature votes on authorizing bonds, there is no more statutory role for the legislature. There is also no statutory state oversight over the TIDD even though 90 percent of the funding will be state gross receipts tax revenue.

FISCAL IMPLICATIONS

The Board of Finance (BOF) at its meeting on January 14, 2008, approved a 50 percent increment for four of the nine TIDDs in the Westland DevCo application. Three of the four districts are industrial areas and the fourth is a mixed use area which includes residential, commercial and retail. The decision to limit the extent of the increment to just these areas was based on recommendations by the Department of Finance and Administration chief economist. The $629 million cap in bonds may not be supported by these revenues. BOF also placed a contingency that Bernalillo County dedicate enough of its GRT and property tax to finance at least $125 million of the infrastructure costs.

The financing plan goes out 39 years until 2047 with each of the 9 TIDDs starting at different times. Since the BOF only approved districts 2, 3, 4, and 8 and an increment of only 50 percent, the incremental revenue created in these districts may not support the total infrastructure needed. The 25 year time limit on bonds begins when the first bond is issued for a district but the tax increment revenues will begin being distributed on July 1, 2008. On TIDD 8, for example, the plan does not expect to issue the first bond until the tenth year, allowing any GRT from activity in the TIDD to accumulate for nine years. According to data from the applicant, the annual surplus goes from $5 million in the case that all nine districts were approved to $21 million with just the four BOF approved.

Bernalillo County unanimously approved the dedication of all of the third one-eight County GRT local option, all of the County environmental services local option and 10 percent of property tax revenues on January 22, 2008. This appears to satisfy the BOF contingency. The County resources available to the TIDD will make up 10 percent of the financing required with the state resources making up the remaining 90 percent (See Chart below).



NMFA, on January 28, 2008, reviewed the bond financing and passed a resolution to that effect. It is unknown whether NMFA will carry legislation since its proposal looks like this bill.

Westland DevCo has provided an economic impact analysis that attempts to show the dynamic impact over several years and the revenue generated from employees, companies and other economic activity. Its analysis shows a positive impact over the life of the project. In the first year of the development—estimated to begin 2009—the fiscal impact is $714 thousand.

DevCo has updated its analysis to reflect both the action by BOF and NMFA and the analysis indicates positive returns to the state over the life of the TIDD. The analysis, based on the previous methodology that fully cost *residents*, now shows costs to the state for only TIDD district 4 since that is the only one where there is residential development. DevCo now shows significant positive benefit to the state reaching over $20 million by the end of build-out in 2023.

January 21, 2008, DEVCO Analysis of TIDD district 2, 3, 4, and 8

	State Costs	State Revenues	State Fiscal Impact	Revenues Diverted to TIDD
2009	-	714,700	714,700	714,700
2010	-	3,049,700	3,049,700	2,774,300
2011	-	5,384,700	5,384,700	4,833,900
2012	-	9,790,867	9,790,867	8,964,667
2013	(3,721,143)	16,699,324	12,978,181	13,821,373
2014	(12,316,767)	23,009,616	10,692,849	15,752,997
2015	(19,817,083)	28,424,088	8,607,005	17,311,666
2016	(25,010,726)	30,197,695	5,186,969	16,330,599
2017	(25,010,726)	31,927,030	6,916,304	17,887,477
2018	(25,010,726)	34,262,030	9,251,304	19,947,077
2019	(25,010,726)	36,597,030	11,586,304	22,006,677
2020	(25,010,726)	38,932,030	13,921,304	24,066,277
2021	(25,010,726)	41,267,030	16,256,304	26,125,877
2022	(25,010,726)	43,602,030	18,591,304	28,185,477
2023	(25,010,726)	45,539,729	20,529,003	29,844,777
2024	(25,010,726)	46,249,505	21,238,779	30,436,403

To the extent the economic activity at the TIDD comes at the expense of growth elsewhere, there will be significant fiscal impacts. This is especially a concern when state economic development resources are deployed on behalf of TIDDs rather than other areas of the state.

SIGNIFICANT ISSUES

Inflation. HB 276 as amended allows the maximum bond issue of $629 million to be adjusted by inflation which means that by 2034, 25 years from now, the maximum amount that can be issued will be over $1 billion (estimated by LFC using a national forecast of the consumer price index). It was presented at the House Taxation and Revenue Committee (HTRC) hearing on HB276 that the amount for infrastructure could not exceed $629 million but the inflation factor was not mentioned in the discussion. **This rough analysis uses the consumer price index for all urban consumers in the U.S. but HB276 does not specify an inflation index and depending on the one used the inflation adjustment could be much higher.**

How Many TIDDs are Possible. At the HTRC hearing, a question was asked about how many TIDDs can the economy of New Mexico sustain. The response was that as long as each TIDD brings new jobs, then the economy can sustain all of them. However, the response missed an important point about the extent to which new growth in the economy of New Mexico takes place within TIDDs at the expense of other non-TIDD areas. In the Albuquerque metropolitan statistical area, for example, the last remaining developable tracts of land are the Mesa del Sol tract and the Westland DevCo tract: both of these are TIDDs. While both developers insist that all of the jobs in the developments will be new jobs to the state, there is a real concern that all of the new jobs in the MSA will go to the TIDDs rather than other parts of the MSA. If this happens, it could mean that growth in revenues for the taxing entities (county, city and state) outside of the TIDDs could stagnate creating a significant financial burden for the entity. According to employment projections made by the University of New Mexico Bureau of Business and Economic Research, the Albuquerque MSA is expected to grow by 21,276 jobs by 2012. Matching this number up with the job projections of Mesa del Sol and Westland DevCo illustrates the potential risk: together the two TIDDs project employment of 6,750 or 31 percent of the growth in the Albuquerque MSA (and about 16 percent of the growth in statewide employment).

The Development. Westland DevCo, a Delaware company, is the actual applicant and developer but it is owned by SunCal. The company was incorporated for the purchase and management of 55,000 acres on the West Mesa outside of Albuquerque that was the Atrisco Land Grant. The development goes from the Rio Grande to the Rio Puerco (near the Route 66 Casino and abutting the Laguna pueblo land). The developers envision a mixed use area that will include significant residential and industrial area taking advantage of the Double Eagle airport and I-40. The application indicates that "new urbanist" design elements will be included in the planning. A description of the planning principles is provided below. Westland DevCo has made sure that all documents relevant to the development and the application have been provided not only to DFA, NMFA, and LFC analysts but also to the public. The company has established a website where they post the documents and lay out the plan (www.tiddfacts.com).

DevCo application:

The Planning Principles for DevCo

- **Environmental Sustainability**

  Conserve land both aesthetically and functionally, and respect existing conditions to naturally leverage environmental sustainability and water management. Sustainability is a concept of careful planning that provides the best outcomes for the human and natural environments both now and into the future.
- **A Connected Community**

  Feature a wide variety of integral open spaces to thoughtfully shape public spaces and promote connectivity and recreation. Carefully lay-out streets to form an interconnected network that offers multiple access routes and disperses traffic. Foster a sense of community and preserve land within defined boundaries by making building forms compact and integrated.
- **Efficient Mix of Uses**

  Locate a range of retail offerings within the various settings to accommodate market demand. Vary housing types to create a welcoming community atmosphere and provide a choice of housing options. Feature "park-once" shared public parking in commercial districts to reduce traffic and promote connectivity.
- **A Sense of Place**

  Design buildings and landscapes to draw upon the local character with an emphasis on pedestrian-oriented public spaces. Locate civic buildings on prominent sites to establish spiritual and civic connections. Create a form-based development regulations through Sector Plan zoning, restrictive covenants, and/or design guidelines to maximize compatibility, predictability and efficiency.

The plan is for $629 million expenditures on infrastructure. The table below shows the types of infrastructure planned. Soft costs include items like planning and engineering as well as a contingency amount equal to 16 percent of the total costs of the project. As mentioned above, NMFA has determined that all of the infrastructure outside the four BOF approved districts provides indirect benefit to those four district. From the table, it's clear that 60 percent is "tract backbone," the majority of which is not planned until 2018 and so does not appear to be crucial to the four approved districts as required by the HBIC amendments.

Westland DevCo Infrastructure Plan

	Hard Costs	Soft Costs	Total Costs	Share of Total
Roads	51,349,550	28,242,253	79,591,803	12.7%
Site Prep	6,465,000	3,555,750	10,020,750	1.6%
Water Infra	18,017,100	9,909,405	27,926,505	4.4%
Sanitary Sewer	9,110,000	5,010,500	14,120,500	2.2%
Drainage	44,488,900	24,468,895	68,957,795	11.0%
Parks and Trails	22,869,000	12,577,950	35,446,950	5.6%
Dry Utilities	6,714,500	3,692,975	10,407,475	1.7%
Enhanced Services	1,820,000	1,001,000	2,821,000	0.4%
Tract Infra Backbone	244,977,500	134,737,625	379,715,125	60.4%
Total	**405,811,550**	**223,196,353**	**629,007,903**	

Westland DevCo "Soft Costs"

Planning	8,116,231	1.29%
Engineering	28,406,809	4.52%
Environmental	2,029,058	0.32%
Material Testing	10,145,289	1.61%
Const Mgmt	14,203,404	2.26%
Const Stak	12,174,347	1.94%
NMGRT	27,919,835	4.44%
Plan Check	13,188,875	2.10%
Contingency	101,452,888	16.13%
Misc.	5,600,199	0.89%
TOTAL SOFT COST ADD-ON	**223,196,353**	**35.49%**

The nine districts encompass 3,950 acres and the plan is to add 12.5 million square feet of industrial spaces (908 acres), 1.7 million square feet of office space, 550 thousand square feet of retail square feet, and 12,461 houses.

Economic development. Westland DevCo's approach to economic development is to focus on four primary objectives: job growth and high incomes for New Mexicans, a variety of housing densities, innovative open space sensitive to natural resources, and attracting and retaining large scale in-state and out-of-state businesses (BOF application). According to a presentation to NMFA on January 17, 2008, DevCo has identified key industry areas to pursue and "has participated in efforts to recruit seven prospect companies." The developers work with the other economic development entities in the state. The target industries and the tax credits currently available from the state are listed below. The tax credit information comes from the economic development website "NM Site Search" (http://www.nmsitesearch.com).

DevCo Targets	**State and Local Tax Incentives Currently Available**
Aviation and Aerospace	Aircraft manufacturing, aerospace research and development, double-weighted sales factor, manufacturing investment tax credit, industrial revenue bonds, high wage jobs tax credit, job training incentive program
Transportation Equipment	Double-weighted sales factor, manufacturing investment tax credit, industrial revenue bonds, high wage jobs tax credit, job training incentive program
Renewable Energy	Renewable energy production, biomass related equipment, double-weighted sales factor, manufacturing investment tax credit, industrial revenue bonds, high wage jobs tax credit, job training incentive program
Semiconductors	Technology jobs, , double-weighted sales factor, manufacturing investment tax credit, industrial revenue bonds, high wage jobs tax credit, job training incentive program
Bio-medical - production	Technology jobs, double-weighted sales factor, manufacturing investment tax credit, industrial revenue bonds, high wage jobs tax credit, job training incentive program
Logistics and Distribution	Job training incentive program
Business Services	Job training incentive program, telemarketing tax exemption, web hosting tax deduction

Fiscal analysis. The original Westland DevCo analysis was based on receiving a 50 percent state increment in all nine TIDDs. The BOF decision to only approve four districts meant that many of the assumptions used in the original analysis are unreliable. Both the revenues attributable to the TIDD and the costs to the state have changed and have been updated by the developer. Districts 1, 5, 6, and 7 are where most of the residents will live and the costs of supporting those residents only apply at the county level. The new analysis shows no cost to the state in the approved districts without a residential component. There are still significant costs associated with employees and commercial enterprise and those costs, implicit in the original analysis that used a resident-based cost estimate, should be revisited using a combination of employment and resident-based cost estimates. To be fair, the changes were unexpected and the timeline does not permit a new exhaustive analysis but it shows the need for a common methodology to evaluate TIDD applications.

An important component of the Westland DevCo analysis is the assumption about the industrial property. In the original analysis, 38 percent of the annual revenues are from industrial activity. If the analysis is updated, which all indications are Westland DevCo is not going to update its analysis based BOF actions, the share of industrial rises much higher since only one non-industrial area will receive the increment.

According to a study done by the Concord Group as part of the Westland DevCo application, the demand for industrial property will be about 50.6 million square feet (144 percent more than what is currently available) over the next 13 years and that the Westland DevCo project will be able to capture 25 percent of this demand. It is important, from the state's perspective, that the analysis assumes that only 10 percent of this demand is coming from outside the Albuquerque Metropolitan Statistical Area (MSA) and the remaining 90 percent is turnover (expansion and relocation). That means that if Westland DevCo is able to capture the entire new demand, the analysis still assumes that almost 60 percent of the industrial activity will be from "intramarket" demand or relocation from within the Albuquerque MSA. This is activity that would have generated revenue for the state that is moving to an area where half of the revenue is redistributed to the development, a potentially huge impact for the state. The development will also be competing with Mesa del Sol, a TIDD approved last year that expects to provide 5 million square feet of industrial space.

Projected Demand of Industrial Space

	SQFT Demand	New Space Demand	Turnover	Project Capture
2007	2.82	0.27	2.55	0.71
2008	2.90	0.25	2.65	0.73
2009	3.06	0.31	2.75	0.77
2010	3.20	0.34	2.86	0.80
2011	3.31	0.34	2.97	0.83
2012	3.43	0.35	3.08	0.86
2013	3.55	0.37	3.18	0.89
2014	3.69	0.40	3.29	0.92
2015	3.83	0.42	3.41	0.96
2016	3.95	0.43	3.52	0.99
2017	4.05	0.43	3.62	1.01
2018	4.16	0.43	3.73	1.04
2019	4.28	0.43	3.85	1.07
2020	4.39	0.43	3.96	1.10
	50.62	5.20	45.42	12.66
		% Relocation (assumes Project captures all new space demand)		58.9%

Source: Concord Group, 9/20/2007

There was no sensitivity analysis done to determine how this industrial factor changes the fiscal impact. In response to an LFC request for this type of analysis, the consultant to the developer indicated that one was not necessary because the costs would shift with the revenues. LFC maintains that that type of analysis is for a closed economy rather than a development adjacent to a major metropolitan area where there will be significant differences in the places of work and residences. The concern is that the developer, who is in competition with Mesa del Sol on the other side of Albuquerque, Rio Rancho, the City of Albuquerque, as well as other areas in New Mexico, will attract businesses that are either already located outside a TIDD or that may have moved elsewhere in the state. This means there could be a change in tax incidence from an area where the state receives 100 percent to an area where the state only receives 50 percent with no change in residents in aggregate.

DFA performed extensive analysis in its recommendation to BOF and has reported the following:

An extensive and elaborate analysis of the Westland DevCo project prepared by the staff

> of the Urban Policy Study Center at Rutgers University indicates that there will be positive revenue to the state for the entire duration of the bond repayment period. In effect, the residual 50% of gross receipts generated after the other 50% increment is used to pay bond debt service will be sufficient to pay the additional costs of education, infrastructure maintenance, police, fire and emergency services and all the other services which will be provided by Bernalillo County, Albuquerque Public Schools and the State. This analysis also indicates that the State and County gross receipts tax increments and the County property tax increment will be sufficient to pay the bulk of the cost of infrastructure built by the developer and transferred to the County.
>
> However, DFA analysts have calculated that the amount of permanent gross receipts tax revenue generated within TIDDs 2, 3, 4 and 8 will be less than 20% of the amount calculated by the Rutgers University study. If this countervailing analysis proves to be true, then the consequences will be significant: (1) the state's contribution will be inefficiently used for long-term senior and supplemental bonds; and (2) the developer will bear the bulk of the costs of building the infrastructure unreimbursed by the TIDD financing. The bonds will be inefficient inasmuch as the risk premium will be large in the early going -- until the permanent gross receipts tax revenue stream will be sufficiently stable and predictable to justify the sale of rated bonds. The State has no representation on the TIDD boards that will make the decision as to how much, what kind and when to sell bonds. The TIDD boards have every reason to sell bonds backed by the State GRT increment at the earliest moment that an investor is willing to buy the bonds. This is an issue of what interest rate and what risk mitigation provisions will be demanded.
>
> The state has no obligation to cover the developer's contingencies in the case that the tax increment bond financing is not sufficient to pay a substantial portion of the developer's costs in building the infrastructure and turning the roads and utility corridors, etc. over to the County.
>
> The State does, however, have an obligation to ensure that the decision as to how much, what kind and when to sell bonds includes some consideration of using State contributions as efficiently as possible. The most efficient bonds are sponge bonds. Sponge bonds are short-term (frequently only one day) bonds that are sold only when there is money in the trust fund.

New Mexico Voices for Children, a nonprofit advocacy group, outlined some of their concerns in a letter to the Governor that was carbon copied to the Director of the LFC among others. The group is concerned that the use of state GRT revenues for TIDDs:

> Using state GRT to finance specific infrastructure projects in TIDDs is an unprecedented use of the state General Fund. Moreover, dedicating state GRT generated in one (usually urban) area of the state for use by only that area for up to 25 years essentially creates an unregulated recurring stream of capital outlay funding. Under TIDDs, the increase in state GRT generated in those urban areas will not go into the General Fund to support budgets for recurring programs—even when those programs benefit the population of that area. Rather, the GRT will go directly to the TIDDs for infrastructure in private development projects without review by the Governor or the Legislature and without any ability to reprioritize that revenue for 25 years. Both the Executive and Legislative branches of state government give up their oversight responsibility and control of these public dollars for the length of the bonds.

Other TIDDs. Mesa del Sol is the first TIDD to have been approved and to receive the state gross receipts tax increment. This is a 3,000 acre development south of the Albuquerque Sunport and Kirtland air force base. The TIDD will receive its first gross receipts tax increment distribution in March. Mesa del Sol has been focused on building up the employment component of its plan and has attracted Advent Solar, Albuquerque Studios, Sony DreamWorks, Schott Glass, and Fidelity Investments. As noted above, all of these industries receive many state incentives and capital outlay appropriations totaling millions of dollars.

ADMINISTRATIVE IMPLICATIONS

TRD has not yet responded but LFC is aware of the need for additional programming systems and staff to effectively track the gross receipts tax revenue and distribute it accurately.

NMFA has reported that since it is a self financing agency, it has no way to recoup the expense of reviewing and analyzing TIDD applications.

TECHNICAL ISSUES

There is no precise definition of inflation included and this could have serious ramifications as to the maximum level of bond issue authority. Using a national forecast of the consumer price index as a measure of inflation increases the $629 million authorized to over $1 billion by 2034.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB398 duplicates HB276 prior to amendment.

HB451 addresses governance issues and changes the parameters for certain types of development.

SB434 places a moratorium on TIDD approval for certain types of development and establishes a tax increment for development task force to study the policy.

OTHER SUBSTANTIVE ISSUES

Board Governance. The County has not responded to requests for information about the makeup of the Board. According to the Master Development Agreement on the Westland DevCo website (www.tiddfacts.com),

> the governing body of each TIDD shall be initially composed of those appointees as provided in the Formation Resolution, which appointees may include an appointee of Applicant, a Finance Expert, a Regulatory Expert, and a Land Use Expert, as such terms are defined below. At the end of the appointed directors' initial terms, the board shall hold an election of new directors by majority vote of owners and qualified resident electors or take such other action as is in accordance with the TIDD Act and the TIDD Ordinance.
> A. A "Financial Expert" is an expert who meets the following requirements: (1) a master of business administration degree (or its equivalent) in a finance or accounting discipline; and (2) at least 15 years of relevant professional experience, preferably related to public finance, land secured finance, and real estate finance;
> B. A "Regulatory Expert" is an expert who meets the following requirements: (1) a

bachelor of arts degree (or its equivalent) in business administration or public administration, or a bachelor of arts or bachelor of science degree in another discipline, plus a master of business administration degree or a master of public administration degree; and (2) at least 15 years of relevant professional experience, preferably related to business or public regulatory matters.

C. A "Land Use Expert" is an expert who meets the following requirements: (1) a bachelor of arts degree (or its equivalent) in business administration, or a bachelor of arts or bachelor of science degree in another discipline, plus a master of business administration degree; and (2) at least 15 years of relevant professional experience, preferably related to real estate acquisition, finance, and/or development, land use matters, commercial property management, or real estate regulatory matters.

There are three concerns if the board is made up as above. First, there is not a majority of elected officials that make up the board. Second, the applicant (Westland DevCo) gets to appoint one of the members of the board. Third, there are no community representatives on the board unless the fifth position which is left uncertain is filled with a community representative. In contrast, the City of Albuquerque designated three council members, a council staff member, and a representative from the Mayor's office as the five board members with the developer acting as a non-voting advisory member.

The County will appoint all five positions initially and then after the first term, the members will stand for election *by the property owners*. After the initial terms, Westland DevCo will still own all or most of the property in the TIDD allowing the company to elect the new board members.

Background on TIDDs. The Tax Increment for Development Act was enacted in 2006. This act allows property owners within an area that is a subset of a city or county to form a tax increment district for development (TIDD). A district would propose a plan of infrastructure investments that would encourage economic development among other goals that would be paid for out of the increased revenue from the development. This increment comes from either increased property taxes or increased gross receipts taxes. The property tax is the smallest component of the potential increase since property taxes are generally low in New Mexico and much of the revenue is already dedicated to debt service constitutionally. It is the gross receipts tax where the increment is important and particularly the state share of the gross receipts tax.

How a TIDD is formed. The process is as follows. A group of property owners decide to form a TIDD and write a proposal to submit to either the city or the county governments. The proposal consists of many required sections including the boundaries of the proposed district, the proposed investments, amount of financing needed, and the economic impacts estimated. The city or county, if they already have an ordinance enacted to allow for TIDDs, then approves the TIDD. This approval will direct the tax increment for the city or county to the TIDD. The TIDD will then go to the next jurisdiction: if the city was the first to approve, the county can also approve and direct that increment to the TIDD. Upon formation of the TIDD, the TIDD can go to the Board of Finance and seek approval for the state portion of gross receipts tax. If BOF approves, the NM Finance Authority reviews the application and carries the proposal to the legislature who ultimately approves the distribution of the state share of gross receipts tax.

The attached presentation illustrates how tax increment financing works.

ALTERNATIVES

DFA reports that the legislature could approve a small bond issue of $50 million and thus force the development to come back for each successive bond issue:

> The legislature could ensure the efficient use of the State's contribution of gross receipts tax in-crement using one or both of two strategies: (1) approving a small bond issuance -- say $50 mil-lion rather than $629,000,000 proposed in the bill. This would require the developer to return to the legislature for approval on an annual or biennial basis for further approvals; or (2) approving the sale of sponge bonds but not long-term senior or supplemental bonds. This would give the developer 50% of the gross receipts tax increment on the construction closely following the time the building contractors are paying gross receipts tax on the buildings and infrastructure. The bonds would be highly efficient, since the money would be in the bank. There would be oversight by the TIDD board that the developer was meeting targets and goals. After a period of time and the developer has recruited jobs to the project, the developer could return to the legislature and propose approval of long-term bonds.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The DevCo TIDD would not be able to move ahead with bond issues. They will still receive the tax increment revenues beginning in July 1, 2008, but would have to come back for approval at a later date. The law is unclear as to what happens to the tax increment revenue if there is no authority to issue bonds. DevCo does not plan on issuing any bonds for several years so the impact would only be uncertainty to the investors but have no material impact on the planning. DevCo is still able to issue bonds secured by the County property and gross receipts taxes distributed to the TIDD.

NF/mt:bb

Tax Increment Financing: The Wave of the Future?

October 24, 2007

Norton Francis, Chief Economist

What is TIF?

- Tax Increment Financing
  - TIF is a tool to allocate revenue generated by development to pay for the infrastructure costs of that development
  - Economic Development Tool: Theory is that it supports development where it might not otherwise happen
  - Nationally, it is typically used for “blighted” areas (i.e. slums, brownfields) but not always.

What is TIF?

- TIF allows the "incremental" revenues generated by growth in an area to be dedicated to providing infrastructure in that area
- Typically, TIF district will issue bonds backed by estimated incremental revenue and use the bond proceeds to pay for infrastructure
- Can be any tax revenue but usually property tax: NM allows both property tax and gross receipts tax to be "TIF'd"

How does it work?

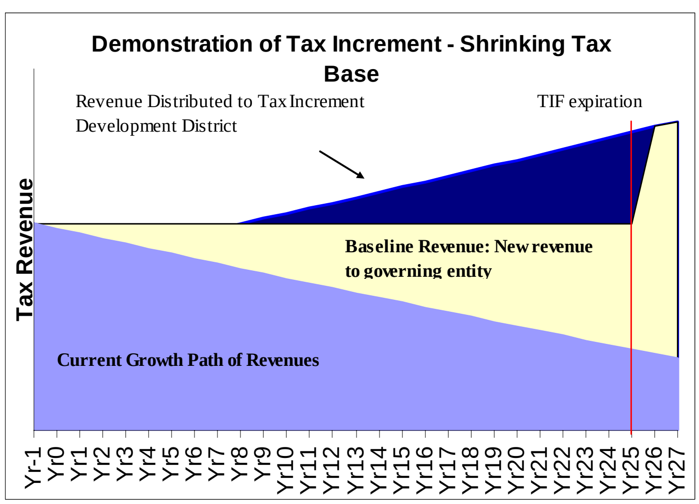
- When a TIF is formed, a baseline is established: TAX_{base}
- TIF board uses economic analysis to determine the incremental revenue and net benefit of the development
- Bonds issued based on economic analysis: due to risk, these are often privately placed in the beginning
- Bond proceeds used to finance infrastructure
- New businesses and residents drive up property values and economic activity and tax revenue increases: TAX_{TIF}
- Debt service paid by increment: $TAX_{TIF} - TAX_{base}$

How Does It Work?

- Blighted Area
  - Because of conditions the area “substantially impairs or arrests the sound growth and economic health and well-being of a municipality” (3-60A-4 NMSA 1978 – Metropolitan Redevelopment Act).
- Slum Area
  - Because of conditions, the area “is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency or crime and is detrimental to the public health, safety, morals or welfare” (3-60A-4 NMSA 1978).
- Other Area
  - “But For” argument: The development would not have happened *but for* TIF financing. This is the criteria for new NM Tax Increment for Development Act (5-15-1 NMSA 1978).

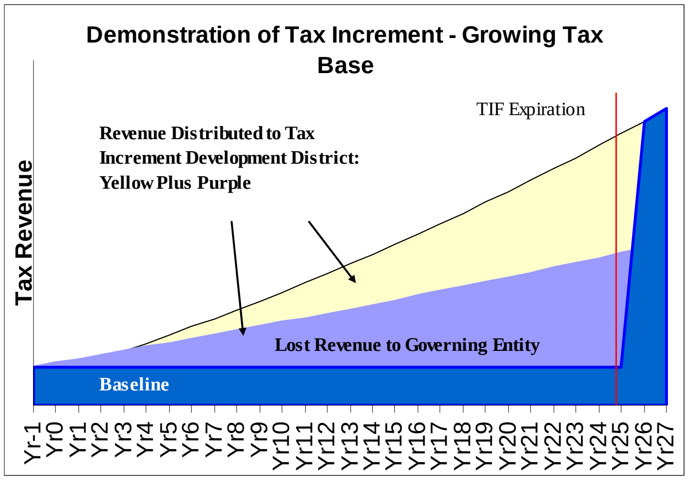
How Does It Work?

- Ideal Use: Blighted areas or areas with declining tax base- TIF stems the decline and increases tax base
  - The purple is the forecast of current revenues generated with a declining growth assumption. The yellow is the additional tax revenue the governing entity receives if the development is successful in stemming the decline. The blue is the excess revenue above the baseline that will be used to pay off the bonds.



How Does It Work?

- Uncertain benefit: Area where growth exists or the potential for growth exists – TIF may increase growth but governing entity loses natural growth
  - The blue area is the baseline revenue-anything above is incremental. The purple area is revenue that the governing entity would have received due to natural growth. The yellow is the revenue from growth beyond natural.



How Has It Worked?

- 49 states and the District of Columbia have some form of TIF statute
  - California was the first in the 1950s
  - New Mexico actually has had TIF legislation since 1979 (Metropolitan Redevelopment Act allows TIF for property taxes)
- Most of the states authorized TIF for blighted areas
  - California enacted TIF to take advantage of federal urban renewal money in the 50s and 60s
  - Conditions of “blight” may be found anywhere and is often easy to demonstrate
- New Mexico is only state to allow state revenues as part of TIF

How Has It Worked?

- Stapleton Airport in Denver widely cited as success
  - Redevelopment project
  - Housing started during boom
  - Only a few years old
- Chicago has over 130 TIF districts representing 30 percent of land and 13 percent of property tax base
- Most developments are small in comparison to Stapleton or Mesa del Sol
- Academic research is mixed on whether TIF helps or hurts

How Does It Work Here?

- Tax Increment for Development Act: 5-15 NMSA 1978; enacted 2006
  - Purpose is to create a mechanism for providing gross receipts tax financing and property tax financing for public infrastructure for the purpose of supporting **economic development and job creation**.
  - Financing uses "incremental" **gross receipts** and property taxes.
  - Laws 2007, Chapter 313, the law that authorized Mesa del Sol, included a restriction on capital outlay appropriations for the district and a cap of $500 million for the bonds.

- Metropolitan Redevelopment Act: 3-60A NMSA 1978; enacted 1979
  - Allow municipalities a tool to acquire, own, lease, improve and dispose of properties in a metropolitan redevelopment area
  - Designed to eliminate slums or blighted areas in areas designated as metropolitan redevelopment areas and that conforms to an approved plan for the area for slum clearance and redevelopment, rehabilitation and conservation
  - TIF for property taxes only

How Does It Work Here?

Public Improvements

- Wastewater systems
- Drainage and flood control
- Water systems (including private)
- Roads, bridges and parking
- Trails and parks
- Landscaping
- Public buildings
- Utilities
- Cable and telecommunications lines and equipment
- Traffic control and lighting
- Public schools (including charter)
- Contract services related to project
- Workforce housing
- **Any other improvement that the governing body determines to be for the use or benefit of the public**

How Does It Work Here?

District Formation

Interested parties collect signatures of 50% of real property owners in proposed district

↓

Petition filed with development plan with governing body who has enacted a TIDD ordinance

↓

Governing body sets public hearing

↓

Governing body passes resolution creating district and calls for election or waives election if waived by all owners of real property

↓

District become political subdivision of the state; directors appointed (first term only – after the first term, directors are elected by TIDD residents)

How Does It Work Here?

Tax Increment Process - State

Governing entity (city or county) approves district

↓

District presents plan to Board of Finance for approval

↓

Upon approval by BOF, NM Finance Authority reviews project

↓

NMFA places bond proposal on legislative agenda

↓

Legislature passes legislation authorizing bond issue

How Does It Work Here?
Mesa Del Sol

- First TIDD in NM
- Located in Albuquerque
- Fiscal estimate done by developer shows positive revenue for the state over 25 year period
  - Relies on assumption of all new activity rather than relocation from other parts of the state
- Tax increment will begin to be distributed on January 1, 2008.
  - Tax increment based on calendar year 2005 GRT and Property tax revenues (virtually zero)
- Negotiated “master development plan” include
  - Stronger workforce housing provisions
  - Hierarchy of use of bond proceeds
  - Mesa del Sol receives construction management fee of 5 percent of district infrastructure costs
  - City of Albuquerque defined “No Net Expense” uniquely for Mesa del Sol.

How Does It Work Here?
Other Possible TIDDs

- SunCal: Bernalillo County approved an ordinance on September 11th. This is the first step to approving a TIDD.
- Santa Teresa in Dona Ana County
- Downtown Las Cruces
- So far, Las Cruces, Albuquerque, Bernalillo and Dona Ana are the only governments to pass ordinances

Final Thoughts

- NM is one of few states that allow state revenue to be part of TIF
  - Impacts all residents and all government services
  - No effective voice for the State after authorization
  - Can be seen as capital outlay for local government outside of the appropriation process
- Compressed time for decision making
  - State under pressure to approve a TIF often with only a few months analysis for a 25 year project
- 25 five year bonds are longer than most bonds currently used for capital investment
  - General obligation are usually 10 years
  - Severance tax bonds are 10 years

Final Thoughts

- Except for Las Cruces Downtown, all planned TIDDs are in "green fields"
  - The growth potential already exists for these parcels
    - In Albuquerque, Mesa del Sol and SunCal are the last major undeveloped parcels
  - Growth in TIDDs may take place at the expense of other growth
- Communities can try to create as many TIDDs as possible to get state share
- How the TIDDs will work with the schools is still uncertain

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