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FISCAL IMPACT REPORT

ORIGINAL DATE 1-25-2008
 LAST UPDATED 2-1-2008 **HB** _____

SPONSOR Grubestic

SHORT TITLE Property Donations to Cultural Affairs Dept. **SB** 242a/SPAC

ANALYST Dearing

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Cultural Affairs Department (DCA)

SUMMARY

Synopsis of Senate Public Affairs Committee Amendment

SPAC Amendment removed language 1) authorizing the Department of Cultural Affairs (DCA) to receive donations of real property under terms and conditions it would negotiate; and 2) enter into lease-purchase agreements by which DCA could sell real property it owns and to accept in-kind payments as payments under such an agreement. The amendment also added language in Section 1C authorizing DCA to acquire by purchase, gift, endowment or legacy real or personal property and hold title to that property in the Department's name for the purpose of promoting, encouraging and supporting the performing arts in New Mexico, which property would be under the control and authority of DCA.

According to the Attorney General's Office response to the amended version of Senate Bill 242, the amendment rendered issues raised in the original bill analysis moot.

Synopsis of Original Bill

Senate Bill 242 carries no appropriation. If enacted, Senate Bill 242 would provide the Cultural Affairs department the authority to accept donations of, own and hold title to real property, under terms it negotiates; in order to promote, encourage, and support the performing arts in the state.

Additionally, it authorizes the secretary, on behalf of the department, to enter into lease-purchase agreements through which the department could sell property it owns to another, perhaps private, entity, and authorizes some or all of the consideration for such sales to be satisfied by in-kind performing arts programs throughout the state.

FISCAL IMPLICATIONS

Senate Bill 242 does not carry an appropriation.

SIGNIFICANT ISSUES

According to the Attorney General's response; to the extent this bill allows the department to accept the donation of real property and enter into a lease-purchase agreement for the express purpose of constructing a building that is to be immediately leased and sold over time to a private entity, it may run afoul of Article IV, § 26 of our state constitution, which bars the legislature from granting any corporation or person any exclusive right, franchise, or privilege. This provision has been interpreted to prevent unequal and partial legislation that favors certain groups or individuals. See AG Op. No. 70-53.

Allowing the department to finance a construction project for a private entity may also violate a fundamental principle of government that public funds (like for constructing a building) are to be used only for public purposes. Here, there may be no public purpose, if the land is being donated so that the department will build a building, funded by the state, specifically designed for the use of the private landowner who donates the land, and immediately agrees to sell it back over time to the former owner.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Potential conflict with Article IV, Section 26 of the NM Constitution, see Substantive Issues above.

TECHNICAL ISSUES

According to the Attorney General's response; sale of real property by a state agency, when the value is over \$100,000, must be ratified and approved by the legislature prior to the sale, pursuant to NMSA 1978, § 13-6-3. It is unclear if Section 1(D) is an attempt to grant such ratification and approval.

ALTERNATIVES

According to the Attorney General's response; under the Statewide Economic Development Act, NMSA 1978, §§ 6-25-1 et seq, which implements the exception to the anti-donation clause of the state Constitution (Art. IX, § 14), the NM Finance Authority may provide financing assistance (revenue bonds, loans, loan participations, or loan guarantees) for projects which achieve economic development goals, including museums, theaters, arenas and assembly halls, to entities which qualify under the act upon receipt of adequate consideration. This may be an appropriate avenue for the activities contemplated by this bill.