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

SPONSOR Lundstrom **ORIGINAL DATE** 02/12/09 **LAST UPDATED** 03/19/09 **HB** 451/aHTRC/aSFC

SHORT TITLE Tax Increment Development District Oversight **SB**

ANALYST White

REVENUE (dollars in thousands)

Estimated Revenue			**Recurring or Non-Rec**	**Fund Affected**
FY09	**FY10**	**FY11**		
	NFI			

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to HB 392, HB 470, SB 19, SB 201, SB 249, SB 467, SB 483, SB 509

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Economic Development Department (EDD)
Department of Finance and Administration (DFA)
New Mexico Finance Authority (NMFA)

SUMMARY

Synopsis of SFC Amendment

The Senate Finance Committee Amendment to House Bill 451 corrects a drafting error in the original legislation. In the official copy of the original bill, the last line of the first page was inadvertently deleted. The SFC amendment inserts the deleted line correcting the drafting error.

Synopsis of HTRC Amendment

The House Taxation and Revenue Committee amendment to House Bill 451 strikes language relating to the reversion of revenues above and beyond those needed to pay debt service and fund a reasonable reserve possibly while bonds are outstanding. A new section is instead inserted at the end of the bill requiring any excess revenues to be reverted back to the taxing governments only once all of a district's bonds are retired.

The amendment also clarifies language relating to the legislature's authority to authorize the issuance of bonds. The change ensures that bonds which must be "specifically authorized" by the legislature are those bonds secured "in whole or in part" by a dedicated state tax increment.

Synopsis of Original Bill

House Bill 451 proposes various technical changes to the Tax Increment for Development Act, designed to give the state a more appropriate level of oversight over Tax Increment Development Districts (TIDDs) as well as provide for additional transparency during the application process. The changes outlined in this legislation can be broken out into three parts.

Increased State Oversight – According to the present statutory language there is no state oversight once the districts have been given bonding authority by the Legislature. House Bill 451 would give the state that oversight by mandating that at least one member of TIDD governance boards be the Secretary of the Department of Finance and Administration (DFA) or designee. The bill also mandates that the Legislature "shall specifically authorize" the maximum amount of bonds which can be issued by the TIDD. This has been done in every piece of TIDD legislation that has yet come before the Legislature however it is not yet a statutory requirement. Additionally this legislation would require any revenues in excess of those needed for debt service and to make up a reasonable reserve, as determined by the TIDD board in consultation with the New Mexico Finance Authority (NMFA), to be reverted back to the taxing entity they originated from.

Increased Transparency – House Bill 451 would also create more transparency during the TIDD application process. The bill would require any county or municipality that adopts a resolution to form a TIDD to notify the appropriate state entities within ten days. The proposed legislation also requires "all resolution materials, including fiscal and economic studies…be available electronically to the public."

Technical Corrections – This bill also makes several technical changes to the statute in order to ease administrative problems which have arisen since the original act's inception. The bill allows the application deposit paid by TIDD applicants to be reimbursed from TIDD bond proceeds and clarifies the taxes which can be distributed to the districts as per New Mexico statute 7-1-6.4 amongst a number of other minor technical corrections.

FISCAL IMPLICATIONS

House Bill 451 would not affect any of the TIDDs currently in existence, and is expected to have little or no fiscal impact related to future TIDDs.

SIGNIFICANT ISSUES

House Bill 451 is a response to the experience of the last three years since the Tax Increment for Development Act was enacted. Along the way there were many features of the legislation where there was no clear guidance and it became apparent to many participants and observers that the legislation could be improved. Particularly from the state's point of view there are very few oversight and accountability mechanisms to safeguard the state's investments. In one development for example, the state is providing 90 percent of the TIDD revenues with no board representation.

Transparency. There is currently no uniform method for the notification of appropriate state entities or the public that a local government or municipality has passed a tax increment financing ordinance. At present, state agencies (State Board of Finance (BOF), New Mexico Finance Authority (NMFA), Taxation and Revenue Department (TRD), and LFC) rely on word of mouth and the media to find out about municipalities and counties who are considering or who have passed TIDD legislation. In order to perform a thorough TIDD analysis state agencies need as much lead time as possible. Therefore it is imperative that appropriate state agencies be notified as soon as possible following any TIDD-related action by a local government or municipality.

The general public also needs to be able to examine the applications and related documents in order to ensure an appropriate amount of transparency in the application process. Currently the public may access these documents from the applicable local government; however they are usually charged a fee to compensate the local government for costs associated with printing and supplying the documents. TIDD applications typically run hundreds of pages long and if printed can cost an individual hundreds of dollars in fees. For this reason House Bill 451 requires that these materials be made available electronically to the public.

Reversion of excess revenues. This language clarifies what is to happen to excess revenues above and beyond those needed for debt service and an appropriate reserve. Under current law, there is no precise guidance as to what happens if the TIDD collects more revenues than needed. This is another important reason to have state representation on the TIDD board, because if there is additional money available there may be an incentive to modify the master development agreement to allow for additional infrastructure not included in the original plan.

Although it is imperative that this issue be addressed, the language currently included in this legislation could have an adverse affect on districts, bonds issued on their behalf, and possibly the state. If incremental revenues were to slow for whatever reason, the districts may not have enough reserves built up to make debt service payments in a timely manner. The language could also negatively impact the bonds' creditworthiness and force the districts to issue debt at a much higher interest rate, ultimately increasing debt service costs. This bill could also prevent districts from retiring bonds early.

New Mexico Finance Authority (NMFA):

> The new section of House Bill 451 that requires that all revenues in excess of that needed to service bonds and any reserves, as determined by the district board in consultation with NMFA, be returned to the taxing authority impairs the ability to retire bonds before their stated maturity. As the statute is currently written, all excess revenues must go to the repayment of bonds which will result in the bonds being paid off sooner. As part of its approval for the Winrock/Quorum TIDD, the New Mexico Finance Authority is requiring that bonds be issued with a "mandatory super sinker (fund)" which is anticipated to reduce the term of those bonds by approximately ten years. This requirement is particularly important when a district does not intend on issuing its first series of bonds for several years, thereby accumulating revenues for a period greater than 25 years.

By requiring future districts to implement a "mandatory super sinker" fund to house all revenues above and beyond those needed to support debt service costs, the districts may be able to use those excess revenues to pay off outstanding bonds before their designated maturity. LFC staff agrees that this method of handling excess revenues would be in the best interest of the state as it could significantly reduce the amount of time dedicated tax increments are outstanding. The bill however, does need language requiring any excess revenues accumulated above and beyond those needed for debt service to be reverted back to the appropriate taxing entity once all bonds are retired and the TIDD is no longer receiving incremental revenues. Senate Bill 201 contains language which properly addresses this issue. The legislature should consider adopting similar language to what is currently in Senate Bill 201 as an amendment to this legislation.

The HTRC amendment addresses this issue and clarifies that excess revenues shall be reverted back to the taxing governments "after the retirement of all bonds issued pursuant to the tax increment development plan."

ADMINISTRATIVE IMPLICATIONS

Depending upon the number of future TIDDs created within New Mexico, this legislation will require the Secretary of Finance and Administration to serve on a number of TIDD boards which may require additional in-state travel.

RELATIONSHIP

HB 451 is nearly identical to HB 392 except that HB 451 does not include any language concerning "greenfield" TIDDs, lowering the maximum allowable increment from 75 percent to 50 percent, or the creation of a TIDD task force.

HB 451 relates to SB 201 which clarifies technical issues raised by the Taxation and Revenue Department. It also addresses incremental revenues in excess of those needed to pay debt service in a manner similar to this legislation.

HB 451 also relates to HB 470, SB 249, SB 467, and SB 19. HB 470 and SB 249 authorize the Westland DevCo (SunCal) TIDDs to issue bonds, SB 467 authorizes the Winrock/Quorum TIDDs to issue bonds, and SB 19 authorizes the Downtown Las Cruces TIDD to issue bonds.

TECHNICAL ISSUES

Language must be inserted into the bill to address procedures for returning excess revenues to appropriate taxing entities once all bonds are retired. If not money above and beyond that needed to pay off bonds will remain in limbo once bonds have been retired and the increment has expired. Senate Bill 201 contains language which properly addresses this issue. The legislature should consider adopting similar language to what is currently in Senate Bill 201 as an amendment to this legislation.

The HTRC amendment addresses this technical issue by inserting a new section at the end of the bill providing for the reversion of any excess revenues once all of a district's bonds are retired.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If this legislation is not enacted the state will continue to have no TIDD oversight once bonding authority is approved by the legislature. Without formal state oversight of the TIDD operations, the TIDD board may make changes to the development plan that are not in the best interest of the state. It is critical that the state be able to add its input when uses of bond proceeds are being approved by the TIDD board.

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