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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 01/30/09  
**LAST UPDATED** 03/20/09    **HB** 470/aHBIC

**SPONSOR**    Sandoval

**SHORT TITLE**    Westland Tax Increment Project Bonds    **SB** \_\_\_\_\_

**ANALYST**    White

### REVENUE (dollars in thousands)

| Estimated Revenue |                 |      | Recurring<br>or Non-Rec | Fund<br>Affected |
|-------------------|-----------------|------|-------------------------|------------------|
| FY09              | FY10            | FY11 |                         |                  |
|                   | * See Narrative |      |                         |                  |

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to SB 19, SB 201, SB 467, SB 483, SB 509, SB 576, HB 392, HB 451, HB 791, HB 870  
 Duplicates SB 249

### SOURCES OF INFORMATION

LFC Files

Westland Devco Applications to the State Board of Finance and Bernalillo County

#### Responses Received From

Department of Finance and Administration (DFA)  
 Taxation and Revenue Department (TRD)

#### Responses Not Received From

Economic Development Department (EDD)  
 New Mexico Finance Authority (NMFA)

### SUMMARY

#### Synopsis of HBIC Amendment

The House Business and Industry Committee Amendment to House Bill 470 attempts to give the legislature greater oversight over the TIDD bond issuance by requiring an objective third party “with expertise in development financing” be appointed by the NMFA oversight committee (NMFAOC) to review any master indenture agreements before bonds are issued. The amendment requires that the costs of this additional review be incurred by the developer (See Technical Issues), which may be able to fund the review through TIDD bond proceeds. The Tax Increment for Development Act already requires the New Mexico Finance Authority to review the master indenture agreements before the issuance of TIDD bonds.

The House Business and Industry Committee Amendment to House Bill 470 also makes a minor technical change to the bill correcting an error identified by LFC and NMFA staff. The original bill states that the district may issue up to \$408 million in bonds “secured by a gross receipts tax increment attributed to the imposition of the state gross receipts tax.” The amount of bonds authorized in the bill is actually secured by various tax increments dedicated by Bernalillo County, and the state. The amended language specifies that the \$408 million maximum bond issuance includes all bonds issued by the districts and not just those secured by state gross receipts taxes. This issue is discussed in more detail in the technical issues section below.

### Synopsis of Original Bill

House Bill 470 authorizes the Westland DevCo, LP, Upper Petroglyph Tax Increment Development Project to issue tax-exempt bonds secured by 50 percent of state gross receipts tax (GRT) revenue, 30.77 percent of county GRT, and 10 percent of county property taxes generated within districts 2, 3, 4, and 8. The maximum bond issuance authorized is \$408 million and is subject to:

- a review by the New Mexico Finance Authority (NMFA) of the master indenture prior to issuance of any bonds,
- a review by NMFA of any proposed amendments to the master indenture prior to the issuance of any bonds subsequent to such amendments,
- a review by the NMFA prior to the issuance of any bonds, of any amendment to the tax increment development plan for the Tax Increment Development Districts (TIDDs) that affects projected revenues to be used to pay the bonds, the use of the proceeds of the bonds or the issuance of the bonds,
- the determination by NMFA that the financing plan is economically sound and that TIDD revenues will not be used by the respective district for a period exceeding 28 years,
- and the determination by NMFA that the proceeds of the bonds will be used for that portion of the project that benefits or facilitates development within the districts per the development plan.

The bill also prohibits the Legislature from authorizing capital outlay projects within the TIDDs while bonds are outstanding except for publicly owned facilities that are:

1. public school buildings or facilities,
2. higher education buildings or facilities,
3. cultural buildings or facilities,
4. buildings or facilities, except roads, used for public safety,
5. or buildings used for other public purposes.

### Summary of BOF Resolution

- On January 14, 2008, the Board of Finance met and approved 50 percent of the state gross receipts tax increment for TIDDs 2, 3, 4, and 8.
- A 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.

- BOF made its approval contingent upon participation totaling at least \$125 million in infrastructure projects 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.

The county finalized its dedication after the BOF meeting at 30.77 percent of county GRT and 10 percent of county property taxes. The county also estimates its participation in the project to be approximately \$127 million, \$2 million in excess of the BOF requirement. A master development agreement was signed on January 12, 2009 by the Bernalillo County Commission however; there is still no TIDD board in place.

**FISCAL IMPLICATIONS**

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.

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 than what was previously considered. The original request was for 22 percent of the GRT and 50 percent of the property tax. 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).

**Table 1: Governmental Funding Participation**

|              | State                 | County               | Total                 |
|--------------|-----------------------|----------------------|-----------------------|
| TIDD 2       | \$ 204,712,613        | \$ 21,789,129        | \$ 226,501,742        |
| TIDD 3       | \$ 198,388,298        | \$ 21,112,724        | \$ 219,501,022        |
| TIDD 4       | \$ 51,313,862         | \$ 9,342,784         | \$ 60,656,646         |
| TIDD 8       | \$ 328,320,426        | \$ 34,934,246        | \$ 363,254,672        |
| <b>Total</b> | <b>\$ 782,735,199</b> | <b>\$ 87,178,883</b> | <b>\$ 869,914,082</b> |

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 Department of Finance and Administration (DFA) staff. Concerns were raised at the time that the \$629 million cap in bonds may not be supported by these revenues. The \$629 million authorization, requested during the 2008 legislative session, has been decreased to \$408 million in House Bill 470. BOF also placed a contingency that Bernalillo County dedicate enough of its GRT and property tax to finance at least \$125 million of the public infrastructure costs. Table 1 shows that while county participation in the nine districts it approved may be slightly over \$127.35 million, its participation in the four state approved districts is just over \$87 million. This represents only 10 percent participation in the state approved districts.

Figure 1:

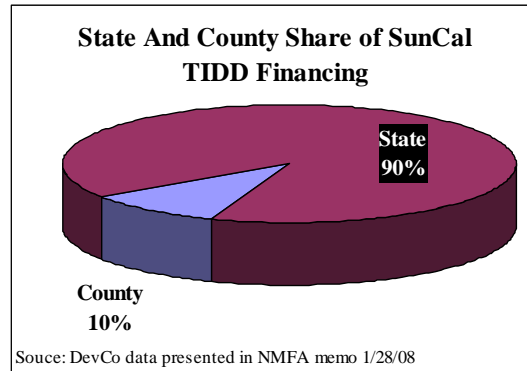


Table 2 shows that during the build-out period, expected to last from 2009 through 2024, the developers project a significant positive fiscal impact to the state. However the funding participation percentage is significantly out of line with the expected benefits of the development. The county should see significantly greater benefits relative to the size of its investment in the project.

**Table 2: Projected Fiscal Impact to the State During Build-Out (in Dollars)**

|      | State Costs  | State Revenues | State Fiscal Impact |
|------|--------------|----------------|---------------------|
| 2009 | -            | 714,700        | 714,700             |
| 2010 | -            | 3,049,700      | 3,049,700           |
| 2011 | -            | 5,384,700      | 5,384,700           |
| 2012 | -            | 9,790,867      | 9,790,867           |
| 2013 | (3,721,143)  | 16,699,324     | 12,978,181          |
| 2014 | (12,316,767) | 23,009,616     | 10,692,849          |
| 2015 | (19,817,083) | 28,424,088     | 8,607,005           |
| 2016 | (25,010,726) | 30,197,695     | 5,186,969           |
| 2017 | (25,010,726) | 31,927,030     | 6,916,304           |
| 2018 | (25,010,726) | 34,262,030     | 9,251,304           |
| 2019 | (25,010,726) | 36,597,030     | 11,586,304          |
| 2020 | (25,010,726) | 38,932,030     | 13,921,304          |
| 2021 | (25,010,726) | 41,267,030     | 16,256,304          |
| 2022 | (25,010,726) | 43,602,030     | 18,591,304          |
| 2023 | (25,010,726) | 45,539,729     | 20,529,003          |
| 2024 | (25,010,726) | 46,249,505     | 21,238,779          |

Department of Finance and Administration (DFA):

DFA's Economic Analysis Unit calculated that the amount of permanent gross receipts tax revenue generated within TIDDs 2, 3, 4 and 8 will be less than 20 percent of the amount calculated by Rutgers University. If this countervailing analysis proves true, the consequences will be significant. First, the state's dedication will be inefficiently used for long-term senior and supplemental bonds, since the risk premium would be large until a permanent gross receipts tax revenue stream justifies 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, and 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 them. Second, the developer will bear the bulk of the costs of building the infrastructure un-reimbursed by state TIDD financing.

House Bill 470 also limits the amount of time that tax increment revenue can be used by a district to a period not to exceed 28 years. This means that although bonds may be issued by the districts whenever they wish, they may not collect tax increment revenue for more than three years preceding bond issuance. Figure 2 shows the expected timeline of bond issuance for the four state approved districts as per the development’s initial review with NMFA. The first bonds expected to be issued, through TIDD 2, in 2012 and the last bonds expected to be retired, by TIDD 8, in 2042. Because House Bill 470 permits districts to collect revenue for three years preceding bond issuance, the development will, under the scenario in Figure 2, collect tax increment revenue from the state for a period of thirty three years.

**Figure 2: Bond Issuance Timeline**

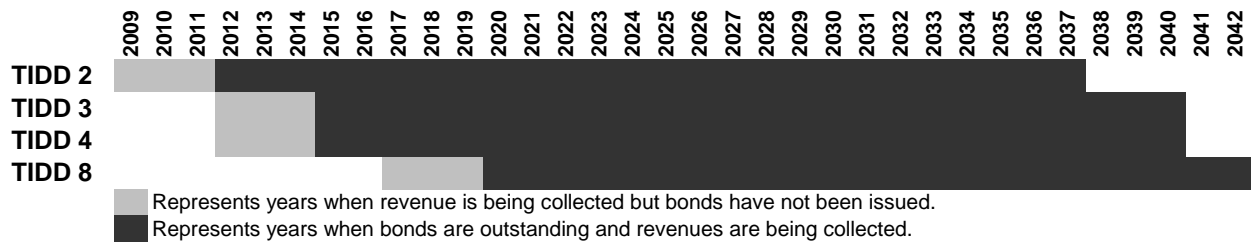


Table 3 shows the projected amounts of infrastructure costs for each TIDD. House Bill 470 caps bonding authority for the four state approved TIDDs to \$408 million in line with the total projected infrastructure costs. This represents a decrease of \$221 million from the \$629 million requested in House Bill 276 during the 2008 legislative session. The \$629 million figure included infrastructure costs related to the five districts not approved by BOF which did not promote any direct benefit to TIDDs 2, 3, 4, and 8. The amount requested in this bill more accurately represents the expected costs of infrastructure projects promoting a direct benefit to the BOF approved TIDDs. The rest of Table 3 summarizes the proposed bonding schedule provided during the initial review by NMFA based upon a maximum total issuance of \$629 million. If House Bill 470 were to be enacted, the developers in consultation with their financial advisors would have to revise this schedule with regard to the amount of bonds issued. Review of the previously developed financing plan however, does show that sufficient revenues are expected to support \$408 million in bonds.

**Table 3: Projected Infrastructure Costs, Bond Issuances, and Bond Proceeds**

|              | Infrastructure        | Bond Issues           | Bond Proceeds         |
|--------------|-----------------------|-----------------------|-----------------------|
| TIDD 2       | \$ 127,722,635        | \$ 144,936,572        | \$ 132,553,797        |
| TIDD 3       | \$ 114,437,430        | \$ 140,421,860        | \$ 128,227,224        |
| TIDD 4       | \$ 75,218,400         | \$ 43,789,606         | \$ 40,688,019         |
| TIDD 8       | \$ 91,079,938         | \$ 235,673,647        | \$ 215,178,271        |
| <b>Total</b> | <b>\$ 408,458,403</b> | <b>\$ 564,821,685</b> | <b>\$ 516,647,311</b> |

Source: www.TIDDFacts.com

Department of Finance and Administration (DFA):

The state has no obligation to cover the developer's contingencies in the case that 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, which are short-term (frequently only one day) bonds that are sold only when cash is available in the trust fund.

### **Assumptions Analysis**

Addressing questions regarding underlying assumptions, the Westland DevCo analysis assumes that 75 percent of all commercial activity and 100 percent of the industrial activity will be “net new” to the state, while none of the retail activity will be considered “net new.” Because industrial revenues are expected to make up more than 70 percent of the overall revenue from the four state-approved districts, the assumption pertaining to shifted industrial revenue is extremely important.

The assumption regarding industrial revenue is the primary driver of the calculation of no net expense to the state. For example, given the total amount of revenues expected to be dedicated from the state over the life of the districts (See Table 4: \$782.7 million) industrial revenues would be expected to make up almost \$548 million. Under current assumptions all of these revenues are expected to be net new to the state. However if this assumption is over estimated by even 10 percent, these revenues could end up consisting of \$55 million in shifted revenue representing a net loss to the state relative to those revenues it is already collecting outside of the district.

The issue of revenue shifting or “cannibalism” was raised in the FIR for Senate Bill 576 which was introduced this session. The FIR states:

“Senate Bill 576 addresses an issue not addressed in any other TIDD reform legislation currently before the legislature. Allowing TIDDs to only receive credit for businesses that are net new to the state would ensure that cannibalism of existing business activity does not occur. This cannibalism or shifting of business activity from outside of the TIDD to inside of the TIDD has the potential to cause a net loss of revenues to the state by subsidizing business activity the state is already collecting taxes on.”

This issue has also been addressed in the analysis of subsequent TIDD applications by BOF and LFC staff. In the Winrock/Quorum (SB 467/HB 870) analysis for example, staff prepared a cash flow analysis which took into account shifted revenue from taxable areas to the TIDD. Then, in order to protect the state from the possibility that the assumptions used may prove to be too optimistic, a reasonable “safety-margin” was subtracted from the increment dedications in an attempt to ensure that there would be no net cost to the state. This process resulted in the actual tax increment dedications from BOF being much different from those increments requested by the developers.

The developers addressed this issue in a sensitivity analysis provided to LFC in response to last year’s analysis and indicated that “even with a 70% cut in employment and no reduction in service population to the State, there still is a fiscal surplus.” This analysis did not take into account the effects shifted revenues would have on current state revenues outside of the districts and therefore the full extent of possible shifting, should the original assumptions prove overly optimistic, have not yet been fully analyzed.

## SIGNIFICANT ISSUES

### **Project Description**

Westland DevCo, a Delaware company, is the actual applicant and developer but 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. Although the entire purchase was for 55,000 acres, the 9 county approved TIDD districts consist of only 4,000 acres with the state BOF approved districts making up about half of that. The development goes from the Rio Grande to the Rio Puerco (near the Route 66 Casino and abutting the Laguna pueblo). 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 ([www.tiddfacts.com](http://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 form-based development regulations through Sector Plan zoning, restrictive covenants, and/or design guidelines to maximize compatibility, predictability and efficiency.

**Table 4: Westland Devco Infrastructure Plan (All 9 Districts)**

|                             | <b>Hard Costs</b>     | <b>Soft Costs</b>     | <b>Total Costs</b>    | <b>Share of Total</b> |
|-----------------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| <b>Roads</b>                | \$ 51,349,550         | \$ 28,242,253         | \$ 79,591,803         | 12.70%                |
| <b>Site Prep</b>            | \$ 6,465,000          | \$ 3,555,750          | \$ 10,020,750         | 1.60%                 |
| <b>Water Infra</b>          | \$ 18,017,100         | \$ 9,909,405          | \$ 27,926,505         | 4.40%                 |
| <b>Sanitary Sewer</b>       | \$ 9,110,000          | \$ 5,010,500          | \$ 14,120,500         | 2.20%                 |
| <b>Drainage</b>             | \$ 44,488,900         | \$ 24,468,895         | \$ 68,957,795         | 11.00%                |
| <b>Parks and Trails</b>     | \$ 22,869,000         | \$ 12,577,950         | \$ 35,446,950         | 5.60%                 |
| <b>Dry Utilities</b>        | \$ 6,714,500          | \$ 3,692,975          | \$ 10,407,475         | 1.70%                 |
| <b>Enhanced Services</b>    | \$ 1,820,000          | \$ 1,001,000          | \$ 2,821,000          | 0.40%                 |
| <b>Tract Infra Backbone</b> | \$ 244,977,500        | \$ 134,737,625        | \$ 379,715,125        | 60.40%                |
| <b>Total</b>                | <b>\$ 405,811,550</b> | <b>\$ 223,196,353</b> | <b>\$ 629,007,903</b> | <b>100.00%</b>        |

The plan for all nine districts consists of \$629 million in infrastructure expenditures. The infrastructure costs promoting a direct benefit to the four BOF approved districts make up \$408 million of those expenditures. Table 4 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. The nine districts encompass 3,950 acres and the plan is to add 12.5 million square feet of industrial space (908 acres), 1.7 million square feet of office space, 550 thousand square feet of retail, and 12,461 houses. 12.5 million feet of industrial space represents approximately 35 percent of the Albuquerque Metro Areas current industrial square footage. The developers also project this development to increase employment in the area by more than 20,000 jobs.

**Table 5: Projected Employment for Westland Devco Development (9 TIDDs)**

|                   | <b>Jobs</b> | <b>% of Total</b> |
|-------------------|-------------|-------------------|
| <b>Industrial</b> | 12,423      | 61.47%            |
| <b>Commercial</b> | 6,743       | 33.36%            |
| <b>Retail</b>     | 1,045       | 5.17%             |
| <b>Total</b>      | 20,211      | 100.00%           |

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>).

**Table 6: Available State and Local Tax Incentives**

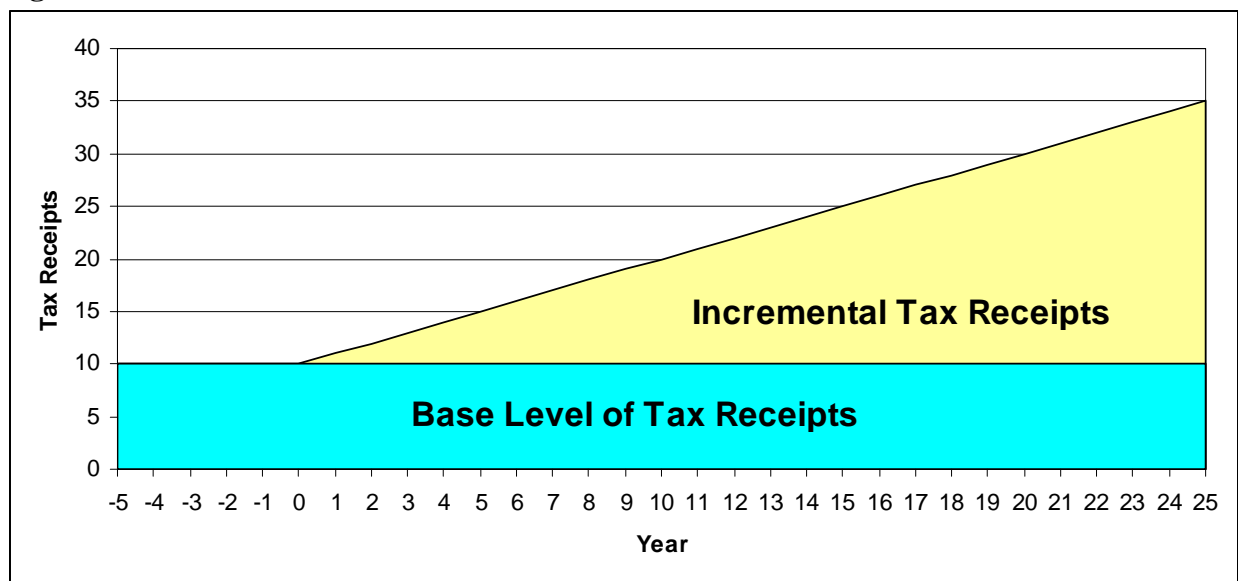


| DevCo Targets              | State and Local Tax Incentives Currently Available   |
|----------------------------|--|
| Aviation and Aerospace     | Aircraft manufacturing, aerospace research and development, double-weighted sales factor, manufacturing investment tax credit, industrial revenue bonds, 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   |

**How Tax Increment Financing is Intended to Work**

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 development district (TIDD). A district can 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, as shown in Figure 3, is derived from the difference between the stagnant base level of tax receipts in year zero and the increasing level of receipts during the life of the TIDD.

**Figure 3:**



The state is then not losing out on any tax revenues that it is already receiving but rather giving

up a certain percentage of the incremental or increased tax receipts that are a result of increased business activity within the TIDD.

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)

For this reason, various contingencies have been inserted into this legislation requiring NMFA to review the bonds' master indenture agreements and be notified if any significant changes are made to the master indenture agreements or tax increment development plan. The NMFA must also determine that the bonds secured by state tax increments will be used to benefit or facilitate development within the BOF approved TIDDs.

The TIDDs referred to in this legislation still have no governing board. According to the finalized master development agreement:

...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. The City of Albuquerque has with other TIDDs designated three city 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.

## **TECHNICAL ISSUES**

The bill states that the maximum bond issuance is “secured by a gross receipts tax increment attributed to the imposition of the state gross receipts tax within tax increment development district numbers 2, 3, 4, and 8.” This language, which has been included in past TIDD bills, is incorrect in that the maximum bond issuance in this case is secured by state and county taxes. Stating that the maximum bond issuance is secured by a tax increment “attributable to the state” could be misconstrued as meaning that only the state increment secures the amount listed in the bill and that the developer could issue additional bonds above and beyond the cap secured by county increments. This language should be amended to include both the state and county increments as securing the bonds.

**The HBIC amendment addresses and corrects this technical issue by inserting “tax increments authorized pursuant to the Tax Increment for Development Act” after the words “secured by.”**

**The HBIC amendment attempts to mirror amendments placed on a duplicate bill (SB 249) on the Senate Floor. DFA expressed a technical concern over one of those amendments in its analysis of Senate Bill 249.**

### **Department of Finance and Administration (DFA):**

**...there is a technical problem with the Senate Floor Amendment #2, provision 2. It appears that the requirement for the developer to pay the costs of a third-party expert review should have been amended into page 2, line 9, before the semicolon rather than into page 2, line 13 before the semicolon. As drafted, it is also unclear whether the third party would only review the master indenture, or also review any proposed amendments to the master indenture.**

**As drafted the review required under the proposed legislation is of the master indenture, but the reference to the developer paying the costs pertains to any proposed amendments to the master indenture. This technical error makes it unclear what the scope of the third-party review includes. Also, it is unclear whether costs of reviewing both the master indenture and proposed amendments to it would be paid by the developer. This language should be amended to specify that the developer will fund all of the third-party review required under this legislation to ensure that the state isn't liable for any costs incurred once the third-party review is complete.**

## **DUPLICATION, RELATIONSHIP**

HB 470 relates to HB 392, HB 451, SB 509, and SB 576 all of which seek to amend the Tax Increment for Development Act.

HB 470 relates to SB 483 which creates a moratorium on “greenfield” developments while simultaneously creating a “Tax Increment Financing Task Force” to study the impacts of “greenfield developments on the state.

**HB 470 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. SB 201 has been amended to add a new sub-section to the definition of “taxable gross receipts” which excludes certain receipts from being eligible for increment to TIDDs 2, 3, 4, and 8 of the Westland DevCo, LP, Upper Petroglyph tax increment development project (SunCal). Any tax receipts “reported by a business that has relocated to the district from elsewhere in New Mexico and that is a manufacturing business or any other business with more than one hundred full-time employees within the district, unless the relocation was accompanied within the twelve months immediately following the relocation by an increase of at least ten percent in the number of full-time employees” would not qualify as “taxable gross receipts” for tax increment purposes. While this amendment would help to limit the impact of “shifted” or “cannibalized” revenues on the state, the businesses identified in the amendment are rather limited. According to the U.S. Census bureau less than 6 percent of businesses in New Mexico currently have more than 100 full-time employees. Therefore this amendment will be limited in its ability to mitigate the impacts of “shifted” or “cannibalized” revenues on the state.**

HB 470 also relates to SB 467, HB 870, and SB 19. SB 467 and HB 870 authorize the Winrock/Quorum TIDDs to issue bonds, and SB 19 authorizes the Downtown Las Cruces TIDD to issue bonds.

House Bill 791 limits the amount of time a tax increment can be outstanding to 25 years regardless of when a TIDDs bonds are issued.

Senate Bill 576 addresses possible cannibalization of TIDD revenues by restricting the allowable increment to be dedicated by BOF to new business activity within the TIDD.

House Bill 470 duplicates Senate Bill 249.

## **OTHER SUBSTANTIVE ISSUES**

Currently the state has no oversight or input in Tax Increment Development Districts (TIDDs) after their increments are dedicated from BOF and they are given bonding authority by the legislature. Of particular worry is the fact that the state currently has no presence on TIDD governing boards despite being in most cases the projects largest investor. Language has been inserted into a number of TIDD bills before the legislature which attempt to give the state greater oversight after bonding authority is approved including the prohibition of capital outlay projects during the life of bonds, and mandatory consultation with the New Mexico Finance Authority (NMFA) and or Board of Finance (BOF) before issuing bonds or amending master development agreements. Despite the use of these requirements in individual TIDD legislation, a comprehensive bill is needed to ensure that the state has sufficient oversight in TIDD projects to

protect its investments. House Bill 451, endorsed by the NMFA Oversight Committee, addresses these issues by giving the state a more appropriate level of oversight.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The Westland Devco TIDDs would not be permitted to issue bonds secured with dedicated tax increments and therefore the developers would not be reimbursed for respective infrastructure costs. The developers would be permitted to come before the legislature again during the 2010 legislative session.

DMW/mt