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

ORIGINAL DATE 02/16/09
SPONSOR Lujan, B. **LAST UPDATED** 02/18/09 **HB** 728/aHTRC

SHORT TITLE Health & Human Services Department Building **SB**

ANALYST Kehoe

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	**FY10**		
NFI	NFI	N/A	See Fiscal Impact Narrative

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
New Mexico Finance Authority (NMFA)
General Services Department, Property Control Division (PCD)
Department of Finance & Administration (DFA)
Children, Youth & Families Department (CYFD)
Human Services Department (HSD)
Department of Health (DOH)

SUMMARY

Synopsis of HTRC Amendment

House Taxation and Revenue Committee amendment items 1 and 2 provide the Property Control Division with the authority to enter into agreements to acquire land, if necessary, for the proposed new health and human services office building proposed in this bill. Item 3 clarifies nothing in the provisions of this bill affects the power of the New Mexico Finance Authority to incur debt, acquire and dispose of property or enter into agreements for other projects authorized in existing laws. Item 4 is a technical correction.

Synopsis of Original Bill

House Bill 728 authorizes the Property Control Division (PCD) to enter into agreements for the acquisition of a health and human services office building in Santa Fe; enter into lease purchase agreements for the building; and enter into subleases with the Human Services Department (HSD) and the Children, Youth and Families Department (CYFD) as tenants of the building.

The bill further authorizes the New Mexico Finance Authority (NMFA) to issue Lease Purchase Revenue Bonds for the purpose of acquiring by construction or the purchase of the buildings, land or infrastructure for the aforementioned facility, and authorizes NMFA to enter into lease purchase agreements for purposes stated in this bill.

FISCAL IMPLICATIONS

House Bill 728 does not create an obligation, debt or liability to the state. The NMFA will purchase Lease Purchase Revenue Bonds with money in the public project revolving fund in an amount not to exceed $80 million. The proceeds of the sale of the bonds are appropriated to the Authority for the purpose of acquiring by construction or purchase the buildings, land or infrastructure necessary for the proposed phase I of the health and human services complex. The NMFA currently has the ability to access the tax exempt markets for this type of financing, so long as a governmental entity occupies the facility. According to NMFA, if the proposed financing is achieved, the cost of funding is significantly reduced as compared to that of traditional financing for a private developer. However, the bill would allow for a developer to bid both construction and lease purchase the building to PCD.

The bonds issued by the Authority are payable solely from a debt service fund. The fund shall consist primarily of lease payments made by PCD pursuant to lease purchase agreements negotiated between PCD and the Authority and the subleases negotiated between PCD and the proposed occupants of the proposed facility. The annual lease payments currently paid by state agencies impacted by this bill total approximately $5.3 million. The fund will also consist of transfers to the fund, legislative appropriations, lease payments made to the PCD or other lessee pursuant to the authorized lease purchase agreement and money earned from investment of the fund. PCD analysis indicates the cost of leases will continue to rise and that over time, the cost of owning and maintaining a state-owned complex to house state agencies will cost less than continuing to pay for increasingly costly leased facilities.

Money in the fund is appropriated to NMFA for the payment of principal, interest, premiums and expenses specific to the bonds issues, and if authorized by law, for payment of required maintenance and repairs of the buildings, land or infrastructure as long as the Authority determines money in the fund is sufficient after debt service is met and required reserves are sufficient. The bill contemplates capitalized interest costs during the construction to allow sufficient time for the facility to be built until such time as lease payments are being collected.

The bill provides that the lease agreement between PCD and the developer (owner) contains an option to purchase the building at a reduced price according to the lease payments made at the end of the lease terms and so long as the lease meets the requirements of the New Mexico State Constitution.

When the Authority certifies that all debt service of the Lease Purchase Revenue Bonds have been paid in full, remaining balances in the debt service fund will be transferred to the general fund.

Section 15-3-35 NMSA 1978 requires ratification and approval by the Legislature of any financing agreement with an option to purchase clause. House Bill 728 requires the contract and financing arrangements proposed in the bill be approved by the Attorney General for legal sufficiency. In addition, a Request for Proposal (RFP) or a contract cannot be entered into without the prior review by the Capital Buildings Planning Commission (CBPC) to ensure that the RFP or contract are the most cost effective and that the facility is within the scope of CBPC master plan.

SIGNIFICANT ISSUES

House Bill 728 provides the funding mechanism for the planning, designing, constructing, equipping and furnishing of phase I of a new health and human services office building in Santa Fe. The proposed facility will be occupied by the Humans Services Department and the Children, Youth and Families Department. The new building, estimated to be 217,000 gross square feet, will allow the two state agencies to vacate approximately the same amount of space currently leased from the private sector.

According to HSD, the departments central office staff has been housed in up to seven various locations in Santa Fe since 1989. HSD currently occupies five leased facilities for administrative staff with Santa Fe County. The decentralized space has severely impacted the efficiency of HSD functions and impacted the effective management of staff. Productivity and efficiency are lost as staff must travel to different sites for meetings, mail delivery, training and other daily activities. The centralization of all central office functions will allow HSD staff to fulfill HSD mission to service its clients expediently, effectively and economically.

All agency respondents to House Bill 728 agree the proposed facility will allow state government as well as the citizens interacting with the departments to operate in a more efficient and effective manner.

PERFORMANCE IMPLICATIONS

HSD indicates the facility proposed in this bill will “enhance customer service and access to public services through adequately trained staff and accessible facilities, as identified in the Governor’s Performance and Accountability Contract.”

ADMINISTRATIVE IMPLICATIONS

The PCD and HSD and CYFD will have to enter into a Joint Powers Agreement or Memorandum of Understanding to appropriately manage the lease payments for the two agencies share of the facility since the agencies will have the general fund in their budgets and will need to cost allocate these dollars to maximize federal dollars received by both HSD and CYFD for their programs. HSD indicates if any of their leases are due to expire before the facility is complete, HSD will need to re-negotiate the leases until such time as the proposed complex is ready for occupancy.

TECHNICAL ISSUES

House Bill 728 may conflict with the New Mexico Finance Act and limit the Authority’s ability to lease facilities to those specifically already authorized by law. Section 6-21-5 currently allows the authority to “acquire, construct, hold, improve, grant mortgage of, accept mortgages of, sell, lease, convey or dispose of real and personal property for its public purposes.” The Act also provides that NMFA can “acquire, construct or improve real property, buildings and facilities for lease and to pledge rentals and other income received from such leases toward the payment of bonds.

NMFA is currently under discussion with public schools and institutions of higher education for potential lease purchase agreements in compliance with the Authority's current statutes. NMFA expresses concerns this bill may require the Authority to get specific legislative authorization and review by the CBPC for any of the lease purchase agreements the Authority may enter.

OTHER SUBSTANTIVE ISSUES

Future phases for expanding the facility proposed in this bill would allow for co-locating other related agencies--Department of Health, Aging and Long-Term Services Department, and portions of the Public Education Department. When totally constructed, "the facility will fulfill the agency's goals of achieving operational and functional efficiencies, generate program synergy and realize economic efficiencies through economies of scale and asset sharing."

LMK/svb