Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

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

SPONSOR Lujan, B. **ORIGINAL DATE** 03/03/09 **LAST UPDATED** 03/13/09 **HB** 820/aHTRC

SHORT TITLE Public-Private Facilities Revenue Bonds **SB**

ANALYST White

REVENUE (dollars in thousands)

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

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Higher Education Department (HED)
Department of Finance and Administration (DFA)

Responses Not Received From
Taxation and Revenue Department (TRD)
New Mexico Association of Counties

SUMMARY

Synopsis of HTRC Amendment

The House Taxation and Revenue Committee Substitute for House Bill 820 strikes "operating capital" from the definition of those aspects "deemed necessary in connection" with a qualified "project."

The amendment also removes the words "any or all" in reference to the amount of local gross receipts taxes which local governments and municipalities may pledge as additional security on bonds issued pursuant to the proposed legislation.

Synopsis of Bill

House Bill 820 creates the Public-Private Facilities Revenue Bond Financing Act which would allow local governments and municipalities to issue bonds in order to "finance all or a portion of the costs" of projects related to "eligible enterprises." The bill defines "eligible enterprises" as:

- An agricultural manufacturing, assembly, or processing facility
- A commercial enterprise for storing, warehousing, or distribution of products related to the agricultural and mining industries
- A business which supplies services, office space, or facilities to the general public or a governmental agency
- A film or visual electronic media company
- Businesses engaged in the development, redevelopment, or improvement or real property.

The bonds issued pursuant to this legislation would be exempt from state taxes, but would not be general obligations of the individual local governments. The bonds would be payable from "net project revenue," which is defined as revenues derived from the lease, operation, sale, or other disposition of a project after deducting reasonable costs of operating and maintaining the projects. The bill also would allow local governments to make their local share of state gross receipts taxes available as a backstop for bond repayment. Bond proceeds will be restricted for use only for the purposes for which the bonds were issued and for costs of acquisition, construction or other project improvement.

Prior to the issuance of bonds, a local government will be required to determine the amount necessary in each year to pay bond principal and interest, maintain any reserve funds deemed necessary, and fund the estimated maintenance cost for projects that the local government will be responsible for maintaining. Local governments will also have to adopt an ordinance that declares the bonds necessary and must also determine that the project will generate net project revenues sufficient to pay the principal and interest of the bonds.

Local governments that issue bonds will be allowed to lease the project to a private partner if the rents provided in the lease are large enough to pay principal and interest on project bonds, accumulate and maintain a reasonable reserve, pay maintenance and insurance costs, and provide a revenue stream to the local government adequate to serve its interests in participating in the project. Once the lease expires, the local government can sell the project to the leasing private partner at fair market value.

Projects entered into pursuant to the proposed legislation will be exempt from the procurement code. The projects instead will be subject to similar provisions deemed necessary by the local government at its discretion. Local government property related to the projects undertaken pursuant to the proposed legislation will also be exempt from state statutory restrictions on disposal of property and will not require approval from the Local Government Division of DFA or the State Board of Finance (BOF).

Qualifying local governments under the proposed legislation would be limited to those with a population of at least 25,000, "home rule" and Class A or H counties. Examples of these types of municipalities include Alamogordo, Albuquerque, Carlsbad, Clovis, Farmington, Gallup, Grants, Hobbs, Las Cruces, Rio Rancho, Roswell, and Santa Fe. Examples of these types of counties include Bernalillo, Dona Ana, San Juan, Santa Fe, and Los Alamos.

FISCAL IMPLICATIONS

All of the revenues which can be pledged by the local governments pursuant to the proposed legislation are local tax revenues which would not otherwise be attributed to the state general fund. This bill also would not affect the amount of total debt that local governments are statutorily permitted to carry, as the proposed bonds would not be general obligations of the local governments or municipalities.

SIGNIFICANT ISSUES

The list of "eligible enterprises" in the proposed legislation consist primarily projects within the agricultural, development, and multi-media business sectors. The projects specifically listed which are:

- An agricultural manufacturing, assembly, or processing facility
- A commercial enterprise for storing, warehousing, or distribution of products related to the agricultural and mining industries
- A business which supplies services, office space, or facilities to the general public or a governmental agency
- A film or visual electronic media company
- Businesses engaged in the development, redevelopment, or improvement or real property.

The proposed legislation does not state from a policy standpoint why the listed businesses should be considered "eligible enterprises" and other businesses should not. It is unclear why the financing mechanism in this bill should not apply to all private-public projects as opposed to those explicitly listed.

Department of Finance and Administration (DFA):

> HB-820 proposes that bond projects are not subject to the provisions of the Procurement Code and amends NMSA 13-1-98.2 to add bond projects as an additional exemption from the Procurement Code. HB-820 proposes that local government project leases not be subject to any other public body approval and amends NMSA 13-6-2 and NMSA 13-6-2.1 to add local government bond property to items to which sale of property approval does not apply.
>
> It is unclear why the projects under this act [should] not be subject to the Procurement Code. Additionally, the leases involved are exempt from existing local public body disposition (lease) approval requirements by any other public bodies, including DFA or Board of Finance.

Due to the dependence of some local economies on a few industries, local gross receipts tax collections may be volatile. Local governments could encounter problems making debt service payments if they rely too heavily on gross receipts tax revenues instead of net project revenues. Because the bond proceeds expenditures authorized in this bill are not limited to capital projects, it is unclear whether or not the bonds issued pursuant to the proposed legislation would be exempt from federal taxes. If the bonds and the projects they finance were exempt from federal taxation they would carry lower annual debt service costs and lower the overall costs of the project.

The HTRC amendment strikes the words "any or all" in reference to those revenues which may be pledged to secure bonds issued pursuant to this proposed legislation. The amendment also inserts language limiting the amount of revenue local governments and municipalities may pledge to "an amount sufficient to pay annual debt services on the bonds." This language change could be problematic to the creditworthiness of the bonds issued by the local governments or municipalities. The local GRT revenues pledged to secure these bonds are intended to be a backstop to revenues generated by the project being financed. This backstop is critical to the underlying creditworthiness of the bonds, as a new project's revenue can be extremely volatile particularly in its early years. While this amendment could help to protect the local government or municipality in the event of default, a downgrade to the underlying creditworthiness would increase annual debt service costs. The possible additional protection provided by the amended language may not be worth the cost to the bonds' underlying creditworthiness, as they would still not be general obligations of the local governments or municipalities.

ALTERNATIVES

There are a number of different alternatives currently available to local governments and municipalities to finance the various qualified public-private partnerships described in this proposed legislation. Those alternatives include:

- Industrial Revenue Bonds (IRBs)
- Tax Increment Development Districts (TIDDs)
- Public Improvement Districts (PIDs)
- New Markets Tax Credits (NMTC)
- Local Economic Development Act (LEDA)
- Capital Outlay

IRBs, TIDDs, and PIDs can all be done at the local level without direct participation from the state. IRBs can be issued by a private entity through a local government or municipality. The local government or municipality would then service the bonds with funds provided by the private entity and would not be liable in the event of a default. IRBs also afford a private entity property tax breaks, and in most cases a lower interest rate on its debt than if it had issued its own bonds in the private market. TIDDs can also be done strictly at the local level, although districts are allowed to seek a dedication of state GRT through the State Board of Finance (BOF). TIDDs allow a local government or municipality to dedicate a portion of future GRT and property tax revenues in excess of those being already collected to the district in order to support bonds issued by the districts themselves. The proceeds from those bonds then go to reimburse private developers who are required to finance the costs of public infrastructure projects up front. While in New Mexico the state may participate in these districts, throughout much of the United States participation is limited only to local governments and municipalities. PIDs are similar and can also be done at the local level. PIDs work by levying a special assessment on property owners within the district and then issuing bonds backed by those special assessment revenues to pay for public infrastructure.

Private entities can apply directly with the New Mexico Finance Authority (NMFA) for New Market Tax Credits (NMTC) and do not need explicit authorization from the state legislature or any state agency. The NMTC is a federal program administered in New Mexico by Finance New Mexico, a taxable arm of the NMFA. According to the U.S. Treasury:

> "The New Markets Tax Credit (NMTC) Program permits taxpayers to receive a credit against Federal income taxes for making qualified equity investments in designated Community Development Entities (CDEs). Substantially all of the qualified equity investment must in turn be used by the CDE to provide investments in low-income communities. The credit provided to the investor totals 39 percent of the cost of the investment and is claimed over a seven-year credit allowance period. In each of the first three years, the investor receives a credit equal to five percent of the total amount paid for the stock or capital interest at the time of purchase. For the final four years, the value of the credit is six percent annually. Investors may not redeem their investments in CDEs prior to the conclusion of the seven-year period."

Due to the wide variety of existing alternative financing tools currently available to local governments and municipalities in New Mexico, it is unclear why the proposed legislation is necessary.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If this legislation is not enacted, the Public-Private Facilities Revenue Bonding Act would not be created and local governments and private industries would need to utilize existing alternative forms of financing.

DMW/mt