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

ORIGINAL DATE 02/24/09
SPONSOR Gardner **LAST UPDATED** **HB** 872

SHORT TITLE No Severance Tax Projects in Certain Counties **SB**

ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	**FY10**		
	See Narrative		

(Parenthesis ( ) Indicate Expenditure Decreases)

House Bill 872 relates Senate Bill 394; please see the narrative.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		$0.1	$0.1	$0.1	Recurring	Various

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Department of Finance and Administration (DFA)
Taxation and Revenue Department (TRD)
Energy, Minerals and Natural Resources Department (ENMRD)

No Response
Association of Counties
New Mexico Municipal League

SUMMARY

Synopsis of Bill

House Bill 872 proposes a new section to the Severance Tax Bonding Act §7-27-1 NMSA 1978, expressly prohibiting issuance of severance tax bonds for the benefit of projects located in counties or municipalities that have enacted ordinances that have an “onerous effect” upon the “extractive industries.”

Severance tax bonds may be issued for projects that benefit the state even if they are located within the planning and platting jurisdiction of a municipality or county that has enacted a zoning or other ordinance that has an onerous effect upon the extractive industries.

FISCAL IMPLICATIONS

House Bill 872 makes no appropriations.

SIGNIFICANT ISSUES

The following comments were contributed by the ENMRD.

HB 872 would have a detrimental impact on those municipalities and counties that rely on severance tax bonds to fund their projects because they would not be allowed to receive such funds if they have ordinances considered onerous to extractive industries.

House Bill 872 does not establish what would be considered "extractive industry." This is problematic. Virtually all economic activity relies in some way upon the use of energy and raw materials, which "extract" resources from the environment. House Bill 872 could be interpreted to apply to virtually all industries, which could mean that every municipality and county could potentially fall under the restriction on use of severance tax funds.

The use of the terms "ordinances," "onerous," and "extractive industries" are significant issues. The terms are undefined, vague, and could be applied to many different types of ordinances and industries.

For example, a dust control ordinance could be considered onerous to surface mining. Additionally, as zoning is a method for planning and controlling land use within a jurisdiction would this be considered "onerous"? If a municipality or county has a zoning ordinance that restricts well drilling within a residential subdivision, this may be considered onerous to an extractive industry, thereby eliminating the ability for the legislature to fund capital outlay projects for benefit of the community with the restrictive zoning ordinance.

Ordinances may have different effects since they are generally drafted to address concerns relevant to that locality. For example, environmental conditions might exist in one locality that do not exist in other localities. Would an ordinance be considered onerous because companies are required to do something in one jurisdiction that they are not required to do in another jurisdiction?

Ordinances will not have the same impact on companies because all companies are not the same. They do not employ the same standards and procedures. They are not the same size. They do not have the same amount of resources. Some companies are better able to absorb the costs of doing business than others. Would an ordinance be onerous if it has less impact on one company than another? Will a municipality or county lose out on severance tax bonds if a company which claims an ordinance is onerous decides to extracts minerals anyway?

The DFA claims that the New Mexico Municipal League is opposed to this legislation.

The TRD comments that the extraction of fossil fuels may cause environmental damages that warrant additional expenses for extractive activities. The bill is unclear on whether these environmental damages can be taken into account in the determination of whether a local government's ordinances have an "onerous effect" on extractive industries. Further, local governments with no fossil fuel reserves would have no need to impose ordinances related to extractive industries, and therefore have no risk of losing severance tax bond projects. The impact across jurisdictions could therefore be highly uneven and discourage the regulation of environmentally damaging extractive practices.

RELATIONSHIP

House Bill 872 is related to Senate Bill 394. Both bills have the same title, and have the same restriction on counties or municipalities that enact zoning or other ordinances that have an onerous effect on the extractive industries. However, House Bill 872 carries no definitions or activities to determine what is onerous.

TECHNICAL ISSUES

According to the DFA, this legislation could potentially have an administrative impact on the State Board of Finance. The State Board of Finance, under Section 7-27-10 of the Severance Tax Bonding Act, is authorized to issue and sell severance tax bonds. Under House Bill 872, it is not clear if the determination of "onerous effect" ordinances will be made by state commissions prior to the legislative session, the legislature during the appropriation process, or if the State Board of Finance will be making the determination prior to distributing severance tax bond proceeds.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The legislature will not be restricted in their ability to fund projects within counties or municipalities with restrictive ordinances onerous to the extractive industry.

CH/svb