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FISCAL IMPACT REPORT

ORIGINAL DATE 2/22/09

SPONSOR McSorley LAST UPDATED _____ HB _____

SHORT TITLE Tax Increment Development District Formation SB 509

ANALYST White

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	Indeterminate * See Narrative			

(Parenthesis () Indicate Revenue Decreases)

Relates to SB 19, SB 249, SB 476, HB 470
 Conflicts with SB 201, SB 483, HB 392, HB 451

SOURCES OF INFORMATION

LFC Files

Responses Received From

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

SUMMARY

Synopsis of Bill

Senate Bill 509 proposes modifications to the Tax Increment for Development Act; enacted by the Legislature in 2006. These modifications can be broken out into four different categories.

Increased State Oversight and Transparency

Senate Bill 509 attempts to grant the state a more appropriate level of tax increment development district (TIDD) oversight by mandating that at least one member of all TIDD boards be the Secretary of DFA or their designee. Currently the state has no presence on any existing TIDD board throughout the state, despite being in most cases the projects' largest source of financing. This bill would also require DFA to present an annual report with regard to the anticipated general fund impact of existing TIDDs to LFC or "other appropriate interim committees" by September 1st of each year. The proposed legislation also takes away the ability to terminate a TIDD from the TIDD board and instead places that responsibility with the State Board of Finance (BOF).

Increased state oversight would also be accomplished by requiring district boards to contract an independent auditor to perform fiscal year audits and provide the findings to the state auditor, LFC, DFA, and the CFO of any county or municipality where the TIDD is located. Under this legislation TIDDs would also become subject to the procurement code.

This legislation seeks to increase transparency of the TIDD process by requiring any governing body having approved a TIDD to post on its website “all material submitted to the governing body in connection with the application for formation of the TIDD.” The bill also requires the districts to establish a website where it must provide annual budgets, board resolutions, annual audits, and meeting minutes to the public.

New Application and Approval Requirements

This legislation also proposes mandating new requirements be met in order for BOF to approve a tax increment dedication. If this bill were to be enacted, applicants would have to show that the proposed TIDD is not a “greenfield” development and that the development would not be likely to occur as laid out in the TIDD plan without a dedication from the state. The bill defines a “greenfield” development as one “consisting of land the majority of which has not been previously developed and is not currently served by municipal or county public infrastructure...and which relies on the development of new residential or commercial structures and the infrastructure required to support them.”

Senate Bill 509 would prohibit local governments from approving “greenfield” TIDDs, and require them to find that a proposed project would not happen “but for” the TIDD, that the TIDD will not jeopardize the local government’s ability to provide appropriate services, and that the TIDD plan conforms to the local government’s general land-use plan. This legislation also proposes a detailed timeline for completion of the project, estimated operating and maintenance costs, and a detailed pro forma financing plan be included in the TIDD plan when applying for a tax increment dedication.

The proposed legislation would also decrease the maximum GRT percentage increment which can be dedicated from either a local government or the state to 50 percent from 75 percent.

Technical Changes

Senate Bill 509 changes the definition of “base gross receipts taxes” and “base property taxes” by requiring them to be annually adjusted by an inflation factor tied to the consumer price index published by the United States bureau of labor statistics.

This bill also addresses revenues collected in excess of those needed to support annual payment of debt service and principal on TIDD bonds. Under the proposed legislation annual excess revenues “shall first be used to accelerate bond payments” instead of just being automatically “accumulated in a debt service reserve account.” Revenues would also not be allowed to accumulate before the TIDDs receive bonding authority from the legislature. Under current law, if a TIDD receives BOF approval but does not receive bonding authority from the legislature it will still accumulate unusable incremental revenues theoretically for eternity. Senate Bill 509 also provides a mechanism for excess revenues to be reverted back to the appropriate taxing authorities once a district is terminated and all bonds have been retired. Additionally, Senate Bill 509 requires TIDD boards to “separately account for all expenditures” made from dedicated tax increment revenues or from the proceeds of TIDD bonds secured with those revenues.

Inclusion of Public Policy Goals

Senate Bill 509 would mandate that BOF require that a TIDD achieve certain public policy goals in order to receive a tax increment dedication from the state. The TIDDs would be eligible for a 10 percent dedication for each public policy goal it includes in its plan, and therefore would only be able to achieve the full 50 percent increment if all five of the goals are included. The proposed public policy goals are listed as:

1. Dedication “of land improved with infrastructure for public school facilities and contributing a one-time payment per dwelling unit for capital improvements to the public school facilities.”
2. Construction of “a transit-oriented development that includes a park-ounce strategy, integrates all modes of transit and if appropriate...includes a framework for a future mass transit system.”
3. Designation of a “minimum of twenty percent of all dwelling units within the TIDD as workforce housing.”
4. Attainment of “goals for sustainable development...(including) the application of environmentally protective technologies and energy and water efficiencies in the project, including all residential, commercial, industrial, and government structures.”
5. Setting of “measurable goals for job creation within the district, including the number of permanent jobs to be created each calendar year during the lifetime of the district; the total number of permanent jobs to be created; and the total number of permanent high-wage jobs to be created.

The bill also provides definitions as necessary for the implementation of the aforementioned public policy goals.

FISCAL IMPLICATIONS

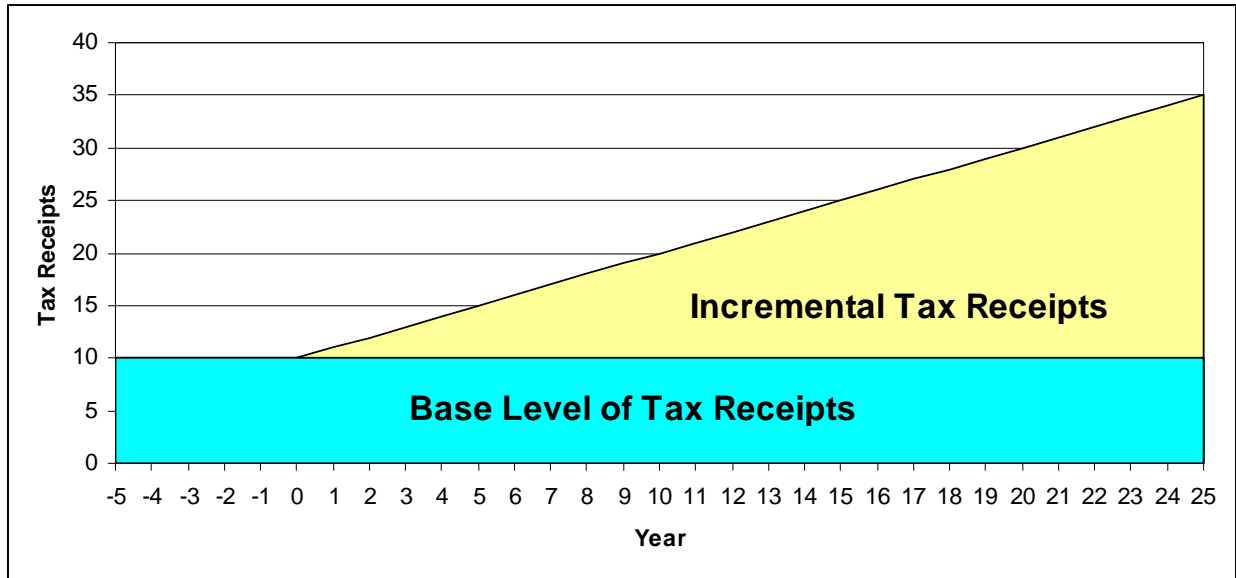
The fiscal implications of Senate Bill 509 are difficult to determine but should be minor. The only aspects of this legislation which could have a significant fiscal impact on the state are the inclusion of an inflation factor when determining “base gross receipts taxes” and limiting the maximum increment to 50 percent. However, both of these aspects would be expected to have a positive fiscal impact on the state.

SIGNIFICANT ISSUES

Tax Increment Financing

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 1, 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 1:



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.

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 reform bill is needed to ensure that the state has sufficient oversight in TIDD projects to protect its investment. 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. There are a number of pieces of legislation currently before the legislature, including Senate Bill 509, which address these critical issues.

New Mexico Finance Authority (NMFA):

The reduction in available GRT from 75 percent to 50 percent significantly reduces a developer’s ability to recover the cost of the public infrastructure. By reducing the available GRT it may require “sponge” bonds to be issued over a longer period of time, thereby extending the term of the overall financing. While portions of the bill contemplate the retirement of debt early, this reduction limits that possibility because the bill does not reduce the amount of public infrastructure that a developer may ask for reimbursement for.

Department of Finance and Administration (DFA):

New Mexico' current (TIDD) Act is fairly unique in that New Mexico law does not restrict the use of tax increment financing to certain types of development, such as urban revitalization or development meant to eliminate blight, which is a requirement in most other states. This bill attempts to address this by it prohibiting the tool from being used for greenfield developments. The New Mexico Act is also unique in that it allows State-level and gross receipts taxes to be used, most other states limit this tool to local property taxes. This bill does not address that issue.

The changes in this bill provide much-needed clarification and technical cleanup on issues that staff realized were problematic once implementation began. These questions included, what happens with excess revenues after a dedication has been made (the SunCal example where an increment accrues into a debt service account without approval to issue bonds.”

More importantly, the bill incorporates policy priorities, which is helpful, as the Board of Finance has had to develop these in NMAC rule form, without formal and specific Legislative guidance. These policy goals are similar to what the Board of Finance is using in its rule and include priorities related to schools, transit oriented development, workforce housing, sustainable development, and high paying and economic base jobs. One outstanding policy question is if a project meets the “but for” clause and includes all of the above-mentioned policy criteria, does that mean the Board has to approve a dedication? In other words, is meeting these five goals sufficient to be in the best interest of the State and receive a State-level dedication? One major requirement that the Board's NMAC rule includes is a “no net expense” criteria for the general fund. It is not clear that this is required by this bill.

From an accountability perspective, a few major provisions, including requiring that the districts follow the procurement code, that a master development agreement is signed with a developer to hold their feet to the fire, and that an independent audit is performed annually, including an audit of expenditure information, go a long way. The audit deadline by December 1 could be a problem if the auditor takes longer than anticipated, and the dedication is suspended, this might also be an issue for the sale of the bonds. Similarly, holding back funding based on the successful completion of earlier phases might be an issue for the issuance of bonds, as it puts into question the security of the pledged revenue.

The bill increases transparency by requiring all documents be made publicly available on a website. However, it does not require that the TIDDs report regularly to the taxing entity, which would be helpful. The bill is not clear on what is to be done with the annual economic incentive and other financing data that are to be determined in conjunction with DFA, LFC and the taxing entity. It adds needed oversight by changing the composition of the Board including State representation and removing potential conflict of interest by adding limits on the number of board members with financial interests.

ADMINISTRATIVE IMPLICATIONS

Department of Finance and Administration (DFA):

“As it stands, DFA staff is struggling to meet the increased workload that the review and analysis required of the applications that have come in to date, with no additional staff. The added requirement that the Cabinet Secretary report annually to the Legislature in great detail on the TIDDs, State representation all TIDD boards, which will probably come from DFA, the requirement to work with the districts annually to make various determinations, the added requirement to have the Board pass the resolution on the termination of each district will significantly impact workload of DFA staff. Having one full-time economist/analyst approved and assigned to carry out the provisions of the Act would help greatly.”

DUPLICATION, RELATIONSHIP

SB 509 duplicates and at times conflicts with HB 451 and HB 392 both of which seek to amend the Tax Increment Development Act. HB 392 addresses “greenfield” developments in a similar way to this legislation, but HB 451 makes no mention of “greenfield” developments.

SB 509 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.

SB 509 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 509 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.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If this legislation is not enacted all types of TIDDs would still be allowed to seek a GRT dedication of 75 percent from both local government and the state. There would also be a continued lack of transparency, policy goals, and state oversight throughout the TIDD process.

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