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

SPONSOR Crook **ORIGINAL DATE** 01/26/12 **LAST UPDATED** **HB** 57

SHORT TITLE Solar Generation Sale-Leaseback Financing **SB**

ANALYST Smith

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY12	**FY13**	**FY14**		
		See narrative	Recurring	State GO bonds
		See narrative	Recurring	Muni, County, School District operating levies
		See narrative	Recurring	Muni, County, School District debt

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 57 allows sale lease-back transactions on solar facilities to qualify for a local personal property tax exemption under the Community Development Investment Act (3-64-2 NMSA 1978). This bill is endorsed by the Revenue Stabilization and Tax Policy Committee.

A "sale/leaseback" is a transaction in which the owner of a property sells an asset, typically real estate, and then leases it back from the buyer. In this way the transaction functions as a loan, with payments taking the form of rent.

FISCAL IMPLICATIONS

This legislation is currently focused on one existing facility.

SIGNIFICANT ISSUES

This bill proposes to use a section of statute that has never previously been used, and, therefore, never been tested. The issues are (1) whether a local jurisdiction (municipality or county) can approve a personal property exemption when that locally approved exemption shifts property tax burden to taxpayers outside that jurisdiction (for both debt and operating) and, (2) whether a county or municipality can approve an exemption that affects the revenues of other jurisdiction without seeking the approval of that jurisdiction.

Another critical policy issue is whether this grant of decision-making authority to a local government will result in inter-regional competition, where the sponsor of a large solar facility would shop that project around the state and pick a site for the project that offered the largest tax abatement for the facility.

Because this exemption has never been used or tested, there may be unintended consequences if this expanded use of the exemption is enacted without understanding the consequences of the current provisions.

Whether or not the subsidy for an existing business is consistent with the spirit of the Community Development Investment Act is not addressed in this analysis.

OTHER SUBSTANTIVE ISSUES

TRD makes the following argument/illustration:

- Property tax rates applied to tangible personal property (TPP) may not be subject to the yield control statute (Section 7-37-7.1 NMSA 1978), since TPP is neither residential, nor non-residential property. Statute is far from clear on this point. Assume for the sake of discussion that business property, such as solar facilities is taxed at the stated rate.
- Assume that a municipality grants a 100% exemption for 20 years for property installed within municipal boundaries.
- The decision by the municipality reduces the total TPP base in the municipality, in the county and in the school district by the amount of the exemption. Some would argue that this is not a reduction in the base, because the project would not be placed in the jurisdiction if the tax abatement is not granted. If the project is placed in the jurisdiction, then municipal, county and school district residents would experience the economic benefits of a significant project in lieu of an increase in total property tax revenues.
- Assuming that the project would happen anyway without the exemption, this reduces the total tax base. The point is that the decision by the municipality forces a reduction in revenues, not only to the municipality, but to the county and the school district. To the extent that the project improves the economy of the region, municipal, county and school district would share in the improvement.
- In many cases, a large project built in a small jurisdiction imposes an additional service burden on the municipality, county and school district. If the municipality has unused rate authority, the municipal governing body could increase the mill levy to make up for the reduced tax base. That increase would be restricted to the property owners within municipal boundaries. The county and school district might not have that same flexibility, but would have to fund the increase in service burden from other sources.

- The chain of argument for debt is similar. The exemption granted for the economic development project reduces the total tax base below what it would be in the absence of the exemption (assuming that the project would be built in that jurisdiction without the exemption.) The calculated debt levies (rates) for the municipality, county, school district and State general obligation (GO) bonds would be fractionally higher because of the exemption. This marginally increases the debt levy in all jurisdictions, not just the municipality that granted the exemption. None of the surrounding jurisdictions would have the right to participate in the decision to grant or deny the application for the exemption.

SS/svb