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FISCAL IMPACT REPORT

ORIGINAL DATE 1/20/15

SPONSOR Leavell LAST UPDATED _____ HB _____

SHORT TITLE Repeal County IRB Complaint Process SB 111

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17	FY18	FY19		
		*	*	*	Recurring	General Fund

(Parenthesis () indicate revenue decreases)

Note: NMEDD asserts that failure to pass this bill will have a detrimental impact on economic development. It is simply not possible to quantify this assertion.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		*	*			

(Parenthesis () indicate expenditure decreases)

Note: DFA/BoF asserts that processing these competitive complaints are exceptionally time-consuming. Relieving DFA of this duty would free scarce resources.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration, Board of Finance

Economic Development Department (EDD)

SUMMARY

Synopsis of Bill

Senate Bill 111 repeals Section 4-59-15 NMSA 1978, a section of the County Industrial Revenue Bond (IRB) Act. Currently, an existing business located within an adopting county or within five miles of the proposed IRB project may file a complaint with the county governing body claiming that the proposed IRB project would "directly or substantially compete" with the existing

business filing the complaint. If such a complaint is filed, the county may not issue the IRBs to fund the proposed IRB project until the State Board of Finance (BOF) has determined that the proposed IRB project does not directly or substantially compete with the existing business. The bill does not include an effective date – assume June 19, 2015.

FISCAL IMPLICATIONS

EDD asserts that this provision is appropriate for retail businesses which exploit local markets, but not for manufacturing, which tend to sell product in national markets. EDD further asserts that failure to pass this bill might result in an impediment to economic development.

SIGNIFICANT ISSUES

The following comments are taken from the BOF analysis.

“Section 4-59-15 NMSA 1978, which would be repealed by this bill, has been in place since the entire County IRB Act was enacted in 1975. To the SBOF's knowledge, no complaints that would invoke this section of statute were filed prior to 2014.”

“On June 10, 2014, a complaint was filed with Dona Ana County by copper wire manufacturer International Wire Group Holdings, Inc., which claimed that Dona Ana County's proposed issuance of IRBs to defray the costs of land, buildings, and equipment for copper wire manufacturer CN Wire Corporation would directly or substantially compete with International Wire's existing business located within one mile of the proposed CN Wire site. On June 16, 2014, Dona Ana County requested that the SBOF make a determination whether the proposed CN Wire IRB project would directly or substantially compete with the existing International Wire Group business. SBOF staff believes this was the first and only instance of such a request for determination from the SBOF.”

“At the SBOF's July 15, 2014 meeting, the SBOF approved publication of notice of a public comment period related to the issue, appointed a member of the SBOF to serve as hearing officer on future hearings related to the issue and to respond to procedural questions on the issue, and adopted procedures that it would use to make its determination. The procedures called for a two-part written public comment period, whereby interested persons could review the first round of public comments and rebut those public comments in the second round. Following the conclusion of the public comment period, the SBOF would schedule a meeting to hold a hearing on the issue, after which a determination would be made.”

“The SBOF was scheduled to hold a hearing on the issue on October 22, 2014. However, on October 8, 2014 Dona Ana County withdrew its request for a determination from the SBOF because it had received notice from CN Wire that the City of Anthony had issued IRBs on behalf of the CN Wire project under the Municipal IRB Act, and the County IRBs were no longer required. The SBOF cancelled its October 22, 2014 meeting and the matter is considered closed from the SBOF's perspective.”

“The Municipal IRB Act, under which the City of Anthony issued IRBs to fund the CN Wire project, does not contain a provision that allows an existing business to file a complaint and prevent issuance of IRBs on behalf of a competing business. In a suit filed on September 15, 2015 by International Wire Group against the City of Anthony and CN Wire, International Wire

argued that the City of Anthony's issuance of IRBs for CN Wire was unlawful and invalid arguing that the Municipal IRB Act contains an implied requirement that IRBs may not be issued for the benefit of a proposed project that would directly or substantially complete with an existing business within the same county or within five miles. International Wire argued that protection from IRB subsidized competition is implied in the Municipal IRB act because the New Mexico Supreme Court has recognized that two statutes covering the same subject matter should be harmonized and construed together when possible, in a way that facilitates their operation and the achievement of their goals. This suit is currently pending in the 3rd Judicial District Court.”

“Under current law, the SBOF's role under 4-59-15 NMSA is unclear and untested. The section does not offer guidance to the SBOF as to what is meant by the term "directly or substantially compete." The BOF's basis for determination is therefore open to interpretation by the SBOF. Section 4-59-16 NMSA 1978 directly following the section that this bill would repeal, states that the County IRB act shall be "liberally construed to carry out its purposes." Section 4-59-3 NMSA 1978 states that the legislative intent of the County IRB act is to promote various forms of industry in the State. Read together, these sections might suggest that when there is a question of competition, the BOF ought to favor a determination that there is no competition, thereby liberally construing its authority to allow the legislative intent of promoting industry to occur through issuance of county IRBs. In so doing, the BOF would also be allowing the county's action to authorize issuance of IRBs to prevail. “

“In its notice of public comment period on the copper wire IRB issue, the SBOF requested public comment on a wide range of topics, including data related to business inputs (such as raw materials, capital and labor), business outputs, manufacturing technology, required workforce training, local labor market characteristics, estimated impacts of the planned project on prices of business inputs or outputs, business input supply constraints, specific business models employed by the two businesses, transportation infrastructure, geographical market factors, and any other information that could assist the SBOF in making its determination.”

“A key difference between the County IRB Act and the Municipal IRB act is that the County IRB Act allows IRBs to be issued by counties for retail businesses, whereas retail is not an allowable use of municipal IRBs. One could infer that perhaps the 1975 Legislature enacted Section 4-59-15 to protect existing retail businesses from IRB-subsidized competition, since retail businesses could be argued to be more likely to compete for a share of a finite local market. Manufacturers may have been seen as competing in a statewide, national, or international marketplace.”

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

BOF comments:

“Repealing Section 4-59-15 NMSA could result in administrative savings for the Department of Finance and Administration. Although no requests for determination pursuant to that section are known to have been made from 1975 to 2013, the request made in 2014 resulted in significant time dedicated by SBOF staff, SBOF counsel, DFA's economic analysis unit (which prepared public comment), and members of the SBOF, who reviewed the issue closely in anticipation of making a determination.”

“Actual cost savings would also include those associated with publishing notices of public comment and meetings in newspapers and avoiding the need to promulgate a rule to formally establish the procedures the SBOF will follow if future requests for determination pursuant to Section 4-59-15 are made.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

BOF comments:

“If Section 4-59-15 is not repealed or amended to include guidance on the definition of "directly or substantially compete" the SBOF will continue to grapple with interpreting the basis on which it should make any future requested determinations. If the basis for a SBOF determination remains unclear, the SBOF could be vulnerable to legal appeal of a determination being arbitrary and capricious.”

“If Section 4-59-15 is not repealed, existing businesses may benefit from greater protection from County IRB-subsidized competition. County IRB issuances may be delayed due to both legitimate and frivolous complaints. Projects may seek municipal IRBs rather than county IRBs to avoid the potential for competition-related complaints.”

LG/bb