FISCAL IMPACT REPORT

		ORIGINAL DATE	2/2/15		
SPONSOR	Munoz	**LAST UPDATED**	2/20/15	**HB**	
SHORT TITLE	Sale of Spaceport America			**SB**	267
				ANALYST	Clark

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	**FY16**	**FY17**		
	See Fiscal Implications	See Fiscal Implications	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	$417.0	$1,500.0		$1,917.0	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with SB 75

SOURCES OF INFORMATION
LFC Files

Responses Received From
New Mexico Spaceport Authority (NMSA)
New Mexico Finance Authority (NMFA)
General Services Department (GSD)

SUMMARY

Synopsis of Bill

Senate Bill 267 requires the New Mexico Spaceport Authority (NMSA), in conjunction with the General Services Department (GSD), and in consultation with the New Mexico Finance Authority (NMFA), to sell Spaceport America at its highest and best use as a spaceport and shall not be for less than fair market value for that use. The agencies shall develop and implement a marketing plan to advertise and promote the sale of Spaceport America by October 1, 2015 to potential national and international buyers. Prior to the close of the sale, NMSA and GSD shall seek legislative approval of the sale.

The net proceeds of the sale shall be deposited in a special account administered by NMFA and shall not revert to the general fund except as provided below. The money in this account shall be used to call and pre-pay to the extent possible and as soon as possible without penalty NMSA bonds issued by NMFA pursuant to the Spaceport Development Act. Any remaining funds after all NMSA bonds have been prepaid shall revert to the general fund.

Upon certification by NMFA that there are no outstanding NMSA bonds, the appropriate board of county commissioners may vote to repeal the county regional spaceport gross receipts tax.

The bill requires NMSA to maintain Spaceport America during the marketing and sale process in the same or better condition as it exists on July 1, 2015. GSD shall be responsible for and shall monitor the condition of Spaceport America through the marketing and sale process.

FISCAL IMPLICATIONS

NMFA provided the following information regarding the NMSA bonds in its analysis.

> NMFA has issued two separate series of tax-exempt bonds (collectively, the "Spaceport America Bonds") on behalf of NMSA:
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> 1) Series 2009 Spaceport Gross Receipts Tax Revenue Bonds ($55,810,000)
> 2) Series 2010 Spaceport Gross Receipts Tax Revenue Bonds ($20,560,000)
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> The Spaceport America Bonds cannot be called prior to June 1, 2019 and December 1, 2020 respectively. Therefore, NMFA must escrow the amount necessary to fully defease the bonds until the call date. Assuming a December 1, 2015 sale, it is estimated that $50,314,801 will be needed to defease the Series 2009 Bonds and $20,560,502 will be needed to defease the Series 2010 Bonds. In total, approximately $70,875,303 will be needed in order to defease outstanding bond obligations. Up until the closing of the sale, NMFA will analyze cash balances in the various bond funds to determine how much additional cash will need to be taken from the net sale proceeds. (See Significant Issues for additional NMFA analysis of defeasance of the bonds and related issues.)
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> As of January 29, 2015, Spaceport America has $2,986,263 of unspent tax-exempt bond proceeds from the Series 2010 Bonds. Spaceport America has until December 10, 2015 to expend remaining bond proceeds on qualified Spaceport America projects.

If the sale of Spaceport America is in excess of $70.9 million, the sale would have a positive impact on the general fund, as the net proceeds not used to defease the bonds revert to the general fund. However, as there is currently no privately-owned, FAA-certified and operational spaceport, it is impossible to determine at this time the fair market value and whether or not the sale would generate the funds necessary to fully defease the Spaceport America bonds.

In addition to this potential one-time impact to the general fund, the sale of Spaceport America and dissolution of NMSA operations would have the benefit of eliminating the need for annual general fund support of operations until such a time if and when NMSA became self-sufficient. However, it would also prevent the potential additional revenues that could be generated if

NMSA were to become a profitable operation, although current statute provides that such potential revenues shall remain with NMSA and shall not revert to the general fund.

The additional operating budget impact shown is NMSA's estimate of the cost to prepare for the sale of Spaceport America. The agency included the following information in its analysis.

> If NMSA is forced to conduct a sale of Spaceport America assets, the agency would lose all revenue streams associated with those assets, including revenue from tenant leaseholds, utilities, user fees, sponsorships, events, and visitors to the facility, all as a result of the transfer or assignment of existing contracts to the new owner. While it is certain that revenue loss in FY16 will occur following the sale, it is reasonable to assume that once the bill is passed, all project momentum would halt, and current customers may either vacate the site or file various suits against the state for anticipatory breach of contract, condemnation or takings, injunctive relief, and others. This would therefore likely impact FY15 revenue as well.

SIGNIFICANT ISSUES

Virgin Galactic, Spaceport America's anchor tenant, has repeatedly pushed back its launch schedule year after year. Following the recent fatal accident, the projected launch date was delayed again. The loss of projected launch revenues from Virgin Galactic, and the related reduction in visitor revenues, produced significant uncertainty regarding the financial stability of NMSA, and the agency submitted a request for a $1.7 million nonrecurring special appropriation from the general fund to cover the potential shortfall for FY16.

This bill does not contain an appropriation for NMSA, GSD, and NMFA to develop and implement the marketing plan to promote the sale of the spaceport, and it is unclear how this would be funded, particularly given NMSA's projected shortfall for FY16.

GSD reported its current proposed budget for FY16 does not include funds to promote such a sale or gather the necessary documentation. The agency stated the expenses associated with the marketing and sales transaction of a property of this nature are large, and expenses will involve the costs of consultants familiar with this type of property in addition to the advertising costs. The documentation that must be generated in order to get Board of Finance approval and to proceed to closing will be costly as well. Furthermore, GSD notes this property is unique and of a highly technical nature, and there is no comparable data available to aid in the analysis. The number of potential buyers is very limited, and therefore the demand for this type of property might be low as well. The timeframe for finding an interested and qualified buyer could be years.

NMSA provided the following information in its analysis.

> It is not entirely clear who the buyer of Spaceport America would be. If there were extensive demand for a 100 percent privatized spaceport, such infrastructure would already exist in this country. The lack of private spaceports indicates that existing publicly-funded spaceports are meeting all current demand for spaceport-related activity, including activities from any would-be private buyers with the financial means to acquire Spaceport America in the sale proposed by the bill. Foreign buyers may be additionally inhibited by International Traffic in Arms Regulations (ITAR) and other foreign

investment and/or export restrictions.

If the bill sponsor has a potential interested purchaser in mind, NMSA would happily entertain privatization discussions of its own volition. Such discussions would then be unencumbered by a mandate to sell from the Legislature. Otherwise, a good analogy would be a homeowner trying to sell his house without any negotiating leverage because the buyers all know he has lost his job and must sell. This marketplace disadvantage would only be magnified by perceptions of vulnerability created by the recent mishap of the spaceport's anchor tenant, Virgin Galactic. Thus the likelihood of achieving a sale price at or above the fair market value of the spaceport, as required by the bill, is greatly reduced.

NMFA provided the following information in its analysis.

Defeasance of the tax-exempt Spaceport America bonds should simultaneously occur with the closing date of sale to avoid any violations of tax-exemption rules. The draft legislation also only requires that Spaceport America be sold for fair market value. There is no guaranty that the amount realized by the sale, i.e. the fair market value, will yield sufficient revenue to defease all the outstanding bonds, especially as it may be difficult to appraise and value Spaceport America, which is a unique facility. In this case, it may be necessary to continue to use regional spaceport gross receipts tax revenues to pay the remaining outstanding principal balance and interest on the Spaceport America bonds; however, use of such revenues to pay for debt service following sale of Spaceport America might jeopardize the tax-exempt status of the remaining bonds. NMFA believes the legislation should require a sale price in an amount at least sufficient to defease the remaining bonds at the time of sale.

PERFORMANCE IMPLICATIONS

NMSA notes passage of the bill would make attracting new customers to the spaceport extremely difficult if not impossible in the near term, as it gives the indication the Legislature is no longer supportive of the endeavor. It is also likely that the scenario created by the bill would cause significant NMSA staff turnover, making it difficult for the agency to carry out either the current or newly-mandated mission.

ADMINISTRATIVE IMPLICATIONS

In addition to the additional operating budget impact for NMSA, GSD, and NMFA to develop and implement the marketing plan and prepare documentation for the sale of Spaceport America, the planning and sale could require significant agency resources.

CONFLICT

The bill conflicts with SB 75, limiting NMSA bond and taxation authority.

TECHNICAL ISSUES

NMFA notes the bill states that remaining regional spaceport gross receipts tax funds in the debt service fund shall be transferred to the appropriate imposing county's general fund. However, once proceeds are escrowed to defease the outstanding Spaceport America bonds, NMFA no longer has the right to intercept spaceport gross receipts tax, and the intercept contract with the Taxation and Revenue Department is terminated. NMFA reports it is unclear where generated spaceport gross receipts tax will flow during the period between bond defeasance, the dissolution of the spaceport tax district and Spaceport Authority, and approvals from both Dona Ana and Sierra County Commissions repealing the ordinance on the Spaceport Gross Receipts Tax; the agency suggests the bill should specifically address where the 75 percent of spaceport gross receipts tax goes in-between these steps.

OTHER SUBSTANTIVE ISSUES

NMSA included the following additional information in its analysis.

> The bill presents at least two issues of federal law. First, Spaceport America's Launch Site Operator License awarded by the Federal Aviation Administration (FAA) cannot be transferred or assigned by NMSA to a new owner. Rather, only FAA may transfer the license, and there can be no assurance that the application for transfer would be approved. The intended recipient of the transferred license must apply through a process similar to that of a new license applicant. Second, the R-5111 airspace managed by the U.S. Army White Sands Missile Range (WSMR), which enables many of Spaceport America's operations, is utilized through a memorandum of agreement between NMSA and WSMR. NMSA may not assign that agreement or any interest arising under it without the express written consent of WSMR. It is unclear whether WSMR would have the legal authority to enter into a similar agreement with a private, non-governmental entity. The present agreement with NMSA was executed pursuant to the 1988 White House Space Policy.
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> Spaceport America is presently obligated by many agreements and subleases. If a new buyer does not faithfully assume performance of those obligations, the state could face significant legal challenges from spaceport tenants and customers, adjacent ranches, counties, and other entities with contract rights in Spaceport America. That potential liability is unquantifiable at this time.

JC/bb/je