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

ORIGINAL DATE 2/20/15
SPONSOR Cervantes **LAST UPDATED** 3/11/15 **HB**

SHORT TITLE Sale & Reporting of Public Securities **SB** 554/SFI#1

ANALYST Kehoe

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		
N/A	N/A	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
New Mexico Finance Authority (NMFA)
Regulation & Licensing Department (RLD)

SUMMARY

Synopsis of SFl Amendment #1

The Senate Floor amendment requires that an individual authorized to sign a contract for the purchase or sale of public securities or to accept a binding bid for securities exercise such authority in a fiduciary capacity thereby requiring that they act in good faith with the highest duty in carrying out the responsibilities delegated to him or her on behalf of the authority.

Synopsis of Original Bill

Senate Bill 554, for the New Mexico Finance Authority Oversight Committee, amends the Supplemental Public Securities Act to expand the definition of “public body” and “public securities” and allows for public bodies to delegate authority for public securities issuances. The bill further amends the New Mexico Finance Authority Act to require NMFA to provide annual reporting to the New Mexico Finance Authority Legislative Oversight Committee on any of the authority’s public securities issuances that involved a delegation of authority. The effective date of this bill is July 1, 2015.

FISCAL IMPLICATIONS

No known fiscal implications.

SIGNIFICANT ISSUES

Senate Bill 554 proposes to expand the definition of “public body” to include the New Mexico Finance Authority (NMFA) as a public body. The term “public body” is currently defined as “this state or any department, board, agency or instrumentality of the state, any county, city, town, village, school district, other district or educational institution or any other governmental agency or political subdivision of the state.”

A proposed new section of the Supplemental Public Securities Act would allow a public body to delegate to one or more members, officers or employees the authority to sign a contract for the purchase or sale of “public securities” or to accept a binding bid for public securities, and to determine the final terms for issuance of such securities. The public body would be required to adopt an authorizing instrument to allow delegating to one or more members, officers or employees of the public body to approve the price at which public securities are sold at the time of final market pricing of such securities. The authorizing instrument would state the purpose of the securities, par amount, term, interest, tax or revenue source pledged to secure payment for the securities, and if to be sold by public or private sale. The designated employee, officer, or other members would be required to affirm in writing that all parameters within the authorizing instrument were met and were in compliance with the proposed changes in the bill. The authorizing instrument would be effective for 180 days or for a specified shorter period.

Currently "public securities" is defined as any bonds, notes, warrants or other obligations now or hereafter authorized to be issued by any public body pursuant to the provisions of any general or special statute, any constitutional or statutory charter or any other law. The bill proposes to add “loans” to the definition of a public security.

The Regulation and Licensing Department (RLD) raised concerns that, by specifically including the term “loans” within the definition of “public securities”, the issuing public body will become subject to the terms of the New Mexico Uniform Securities Act, Section 58-13C-1, *et seq.*, NMSA 1978. However, NMFA indicates “security” as defined in the Uniform Securities Act already includes the terms “bond” and “evidence of indebtedness”. The NMFA does not believe that adding the term “loan” to the Supplemental Public Securities Act definition of “public security” will have this effect as, in the first instance; “bonds” are already included in the relevant definitions in both Acts. In the second instance, “loans” are likely already encompassed in the Uniform Securities Act definition under the rubric of “evidence of indebtedness”. According to NMFA, amending the definition of *public* securities issued by public bodies should not affect the definition of “securities” under the Uniform Securities Act, or the scope of the Public Securities Act. All “securities” issued by public bodies are already exempt from the registration requirements of the Uniform Securities Act (Section 58-13C-201, NMSA 1978).

NMFA points out that the addition of the term “loans” to the definition of “public securities” is likely superfluous, as the statute currently includes the blanket term “or other obligations” in the relevant definition. NMFA considers that a “loan” is an “obligation” within the current scope and meaning of the Supplemental Public Securities Act. The Municipal Code states that for the purposes of the revenue bond provisions, the term ‘bond’ means any obligation of a municipality issued under Chapter 3, Article 31 NMSA 1978, whether designated as a bond, note, loan, warrant, debenture, lease-purchase agreement or other instrument evidencing an obligation of a municipality to make payments. Section 3-31-1(D), NMSA 1978, County Revenue Bond Statute provides identical language as Section 4-62-1(R). The New Mexico Finance Authority Act also defines a bond to mean 'any bonds, notes, certificates of participation or other evidence of indebtedness.' Section 6-21-3(B), NMSA 1978 also tracks accordingly with the Internal Revenue Code, which states that the term 'bond' means an 'obligation of a state or political subdivision. NMFA states that by enacting this bill, "New Mexico will come into compliance with standard municipal market practices in the United States." RLD indicates the process by which public securities are now issued, bought, or sold is a slow process and that this bill likely attempts to correct a problem of efficiency.

TECHNICAL ISSUES

If the current definition of "security", including the term "evidence of indebtedness" is not deemed to include "loans", RLD's concern could be addressed by proposing an amendment to the definition of "security" in the Uniform Securities Act to specifically include loans.

The bill does not clearly specify the process by which a person(s) will be chosen to serve as the delegated authority to carry out the proposed amendments to the current Act.

OTHER SUBSTANTIVE ISSUES

NMFA indicates the amendments proposed in this bill will provide the following benefits:

- Allows the NMFA to delegate bond sale approval authority
- All bond issuers in the State, including the NMFA and the New Mexico Department of Transportation ("NMDOT"), would benefit
- Delegation is specific and limited
- Delegation ensures public accountability, which is less robust without delegation
- Conforms with what other states do and with standard municipal market practice in the United States
- Produces more informed decisions
- Increases public accountability
- Improves process efficiency
- Decreases the cost of issuing bonds
- Eliminates approval risk premium added to pricing costs
- Attract additional investors in NMFA bonds
- Special meetings will no longer be necessary to finalize bond sale awards to underwriters representing investors
- Allows for competitive bond sales and negotiated bonds sales to be managed and scheduled in line with prevailing market conditions
- Builds on good organizational and good government practices

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