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FISCAL IMPACT REPORT

ORIGINAL DATE 2/28/17

SPONSOR Neville LAST UPDATED _____ HB _____

SHORT TITLE County Industrial Revenue Bonds SB 394

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue					R or NR **	Fund Affected
FY17	FY18	FY19	FY20	FY21		
Not Quantifiable, but will probably increase general fund costs.						General Fund (compensating tax)
Not Quantifiable						Local Government property tax revenue

Parenthesis () indicate expenditure decreases. ** R = recurring; NR = non-recurring

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	R or NR **	Fund Affected
Total						

Parenthesis () indicate expenditure decreases. ** R = recurring; NR = non-recurring

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Association of Counties

SUMMARY

Synopsis of Bill

Senate Bill 394 repeals and recompiles many provisions of the industrial revenue bond act (Chapter 3, Section 32 NMSA 1978) and the County Industrial Revenue Bond Act (Chapter 4, Section 59 NMSA 1978) as Chapter 5, Article 20 NMSA 1987. The bill then amends some of these sections and unifies the provisions which had previously been disparate. One primary change is to allow counties more control of the process when a company requests approval of industrial revenue bond (IRB) in the zone within 15 miles of the exterior boundary of a municipality. Previously, the municipality could sponsor an IRB in this extraterritoriality zone, but the amendments of this bill assign sponsorship and approval authority to the county.

Mining projects and energy processing facilities are added, as well as an exemption to the prohibition on financing retail facilities if the majority of sales are to out-of-state buyers.

A detailed section by section is included as an attachment.

The effective date of this bill is July 1, 2017. There is no delayed repeal date for this bill. The LFC recommends adding a delayed repeal date. These economic development incentives should be periodically reviewed to determine whether they continue to be effective and utilized.

FISCAL IMPLICATIONS

Although counties and municipalities have used the industrial revenue bond means of encouraging economic development, the approvals of IRB projects create tax expenditures at the local, school district and state levels. For this reason, this bill may be counter to the LFC tax policy principle of adequacy, efficiency, and equity. Due to the increasing cost of tax expenditures, revenues may be insufficient to cover growing recurring appropriations.

On the other hand, thorough study of the IRB mechanism as currently used may show that the sponsoring entities do show a long-term benefit from sponsoring IRB projects.

Estimating the cost of tax expenditures is difficult. This statement is particularly appropriate for the provisions of this bill. Since all IRB projects are sponsored and approved by either a county commission or a municipal council, there is no mechanism to report the costs and benefits to any other entity, including the media, except the sponsoring entity. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures. It is not well known, but the revenue costs of IRBs are borne at the state level, not just at the local level. The “fig leaf” of the current implementation of IRBs is that the mechanism is more a tax avoidance strategy than a financing mechanism. A company approved for an IRB is granted substantial tax benefits. A building and the equipment are “sold” to the sponsoring government, which then holds title to both the building and the equipment. The company builds a plant – sometimes on land owned by the governing body. The company purchases and installs any required equipment in the name of the sponsoring governing body. The county issues IRBs in order to purchase the building and equipment. The bond purchaser is, in most cases, the company or the company’s holding company. The company leases the building and equipment from the governing body. The monthly or annual lease payments are just equal to the bond payments. No cash is exchanged. At the conclusion of the IRB period (typically 30 years), the bonds are paid off and the building and equipment transferred to the company. Since the sponsoring government body owns the building and equipment, there is no property tax paid. Sometimes there is a PILOT negotiated, so that the school district does not share the fiscal burden of the deal. In some cases, the PILOT extends to a portion of the property tax that would otherwise accrue to the sponsoring governing body or to other property tax beneficiaries. In addition to property tax exemption (property owned by governments is not taxable pursuant to the provisions of the property tax code.), the sales of equipment to a government entity are equally deductible from gross receipts tax or from compensating tax.

With the complexity of this mechanism, it is virtually impossible to determine – either a priori or a posteriori – the costs or benefits to the various levels of government involved.

For just the Intel presence in New Mexico, total tax expenditures have been estimated at \$2.6 billion.¹ While this cost can, with substantial effort, be determined, the corresponding benefits are even more difficult to quantify. At its peak, Intel employed over 5,000 highly paid workers. Currently, Intel employment has declined to about 1,200. Although Intel may be the largest cumulative IRB approved and utilized in New Mexico, the recent announcement by Facebook involved the approval by the Village of Las Lunas of a \$30 billion IRB.² Collateral information indicated that the project would involve \$500 million in construction and \$20 million annually in local wages and compensation, with more spent on local procurement of goods and services.³ LFC staff have concluded that approval by Las Lunas of a \$30 billion IRB is indicative of future expansion plans – perhaps even plans to expand into the territory currently occupied by Amazon.com or even eBay. Current IRB needs are estimated at under \$1 billion, so \$29 billion represents potential expansion.

SIGNIFICANT ISSUES

One possible item of concern in this composite bill is the addition of “newly permitted mines” and “refineries or energy processing facilities. These two new areas of potential projects conform the bill to its Legislative Intent (Section 3 of the bill), which specifically mentions “promoting the use of ... natural resources of this state.”

Deleting the specific limitation to “hospital” and replacing it with the generic “501(c)(3) corporation project” may also be of concern.

On the whole, this bill moves the pendulum toward more power and control of county governments over municipal governments, adds project types, and may increase both utilization of the mechanism, short term costs to all levels of government and the possibility of more jobs and economic development.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is not met since neither TRD nor the sponsoring governing body are required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose.

The State Auditor has announced a major new reporting requirement for governmental entities to report on tax expenditures in the notes of annual financial reports.

GASB 77 Requires Disclosure of Tax Abatement Agreements:

The tax codes of federal, state and local governments contain many provisions that give taxpayers a “tax break” based on something that the taxpayer does or agrees to do. “Tax expenditures” are revenue losses attributable to those provisions. The Governmental Accounting Standards Board (GASB) has recognized that tax expenditure information “is informative about a government’s economic condition and, therefore, highly relevant to the objectives of financial reporting.” GASB has taken a first step toward requiring the

¹ <http://newsok.com/article/feed/1003369>

² <https://www.abqjournal.com/819277/nm-to-hold-facebook-hearing-next-week.html>

³ Op cit

disclosure of tax expenditures through its newest standard, GASB 77. The new accounting standard is a critical piece of the larger project of understanding how redirected revenue affects government finances. This Bulletin discusses the basic principles of GASB 77. The Office of the State Auditor (OSA) will continue to issue guidance on this critical topic as the time for implementation begins. GASB 77 is effective for financial periods beginning after December 15, 2015. For agencies with a June 30 fiscal year end, this means that Fiscal Year 2017 will be the first year for which GASB 77 is effective. Because Fiscal Year 2017 begins on July 1, 2016, the OSA encourages agencies to learn about GASB 77 as soon as possible, so that they can gather the information that will be necessary for financial reporting.

How Will GASB 77 Data be Useful?

Tax expenditures usually come about because lawmakers want to create an incentive for a certain behavior. A “tax break” may reward companies that create jobs, foster a particular industry or encourage certain consumer behavior. However, New Mexico has yet to engage in a comprehensive cost-benefit analysis of tax expenditures. Having a comprehensive inventory of tax expenditures is a first step, and GASB 77 will help to identify some of the local programs not covered in the TRD report. Understanding the amount of money that governments forgo from tax breaks through GASB 77 disclosures is a critical piece of the “cost” side of the cost-benefit equation. The next step after that - understanding whether and to what extent the tax break is working to create its intended effect - is the more complex, “benefit” half of the analysis.

It should be noted, however, the audits containing this detailed information will not be available for general public review until late CY 2017.

ADMINISTRATIVE IMPLICATIONS

No TRD impact. No other state-level impact. Local government impact can be substantial.

TECHNICAL ISSUES

This bill does not contain a delayed repeal date. LFC recommends adding a delayed repeal date. Because of the historic lack of transparency for IRBs, a firm review date should be established. Because GASB 77 has the potential to develop a massive amount of data on IRB costs, this review date could be set for December 1, 2021 or 2022.

OTHER SUBSTANTIVE ISSUES

Although IRBs seem instinctively to violate the state’s anti donation clauses, in particular Article IX, Section 14, however, the 2002 constitutional amendment to void the anti-donation provisions pursuant to laws enacted to promote jobs and economic development. Previous jurisprudence seemed to worry more about municipal debt section of Article IX, Section 12, than the anti-donation issue. Currently, there is no particular constitutional objection to the IRB process.

Two older cases are cited:

Kennecott Copper Corp. v. Town of Hurley, 1973-NMSC-032, 84 N.M. 743, 507 P.2d 1074.

Village of Deming v. Hosdreg Co., 1956-NMSC-111, 62 N.M. 18, 303 P.2d 920

With the latter of particular importance, since it decided in 1956 (prior to the economic development breach of the section), that the constitutionality of bonds issued for purpose of promoting industry and trade did not violate N.M. Const., art. IX, § 12 or 14. Village of Deming v. Hosdreg Co., 1956-NMSC-111, 62 N.M. 18, 303 P.2d 920.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The existing Industrial Revenue Bond Act and the County Industrial Revenue Bond Act would remain intact. The only particular provisions that would be lost in not enacting this combination and consolidating bill is that Counties would not be able to veto projects sponsored by a municipality in county areas within 15 miles of the boundaries of the municipality. And mining and energy processing plants would be allowed projects. Finally, if LFC staff speculation is correct that allowing a retail project where the majority of goods were sold to out-of-state buyers was requested by Facebook, then failure to enact this bill might mean that Facebook would never expand into retail sales.

Does the bill meet the Legislative Finance Committee tax expenditure policy principles?		
1. Vetted:	The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee (RSTP), to review fiscal, legal, and general policy parameters.	
2. Targeted:	The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals.	
3. Transparent:	The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies.	
4. Accountable:	The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date.	
5. Effective:	The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions “but for” the existence of the tax expenditure.	
6. Efficient:	The tax expenditure is the most cost-effective way to achieve the desired results.	

LFC Tax Expenditure Policy Principle	Met?	Comments
Vetted	✘	
Targeted		
Clearly stated purpose	✔	
Long-term goals	✘	
Measurable targets	✘	
Transparent	✔	
Accountable		
Public analysis	✘	
Expiration date	✘	

Effective		
Fulfills stated purpose	?	
Passes “but for” test	?	
Efficient	?	
Key: ✓ Met ✗ Not Met ? Unclear		

LG/al

ATTACHMENT 1
Section-By-Section

Section 1: recompiles previous statutes and names the act the Industrial Revenue Bond Act (Chapter 5, Section 20 NMSA 1978) and updates statutory references.

Section 2: recompiles precursor DEFINITIONS sections and makes some changes. Primarily reorders existing definitions in alphabetic order. However, adds several projects to the applicability list: (a) newly permitted mining project; (b) a refinery or other energy products processing plant; (c) allows a retail operation for telecommunications sales enterprise that makes the majority of its sales to persons outside of New Mexico. This may be a request from Facebook's lawyers (d) allows a water utility. Retains in the list a 501(c)(3) corporation project as an allowed project. In other sections of the bill, the restriction of a 501(c)(3) project to hospitals is removed. The 501(c)(3) inclusion allows a county or municipality to use the IRB mechanism to refinance a hospital project or any other similar project.

Section 3: recompiles the LEGISLATIVE INTENT sections and emphasizes that the legislative intent of the IRB act includes specific instructions to allow a local government to do an IRB for a 501(c)(3) refinancing. The sponsoring government, however, is not permitted to operate the 501(c)(3) facility if financed or refinanced with an IRB.

Section 4: recompiles ADDITIONAL POWERS CONFERRED ON LOCAL GOVERNMENTS sections and provides additional authority for counties to sponsor and approve IRBs. Counties have approved IRB projects for over 35 years (the original Intel project was approved by Sandoval County in 1980. The 30-year bonds were retired in 2010 and Intel began paying property taxes on the properties included in the original IRB. Other tranches come due in 2014 and 2023. Intel owns over 1,000,000 square feet of manufacturing space valued at \$2,500 per square foot.⁴). The bill provides that sponsorship of any project located outside a municipal boundary is solely the prerogative of the county. Bernalillo County, as a class A county with population of 300,000) is specifically authorized to sponsor and approve projects in any areas of the county including within the boundaries of Albuquerque. The 2010 population of Doña Ana County was 209,233 and will not reach the 300,000 population threshold until 2040 at the earliest.

Section 5: recompiles the NOTICE OF INTENT TO ISSUE INDUSTRIAL REVENUE BONDS – MUNICIPALITIES and reiterates the notification requirement for municipalities to consider an IRB project. The notification is to the county or counties where the propose project is to be located. However, if the project is totally within municipal boundaries, the county has no veto authority.

Section 6: recompiles the NOTIFICATION (Counties) sections and updates statutory references.

Section 7: recompiles the BOND ISSUANCE sections to be applicable to both counties and municipalities.

Section 8: recompiles the SECURITY FOR BONDS sections to be applicable to both counties and municipalities and updates statutory references.

⁴ <http://newsok.com/article/feed/1003369>

Section 9: recompiles the REQUIREMENTS RESPECTING LEASE sections to be applicable to both counties and municipalities and updates statutory references.

Section 10: recompiles the REFUNDING BONDS sections to be applicable to both counties and municipalities and updates statutory references.

Section 11: recompiles the USE OF PROCEEDS FROM SALE OF BONDS sections to be applicable to both counties and municipalities and updates statutory references.

Section 12: recompiles the NO CONTRIBUTION BY LOCAL GOVERNMENT sections to be applicable to both counties and municipalities and updates statutory references. Section also permits contributions of LEDA funds to an IRB project.

Section 13: recompiles the BONDS MADE LEGAL INVESTMENTS sections and updates statutory references.

Section 14: recompiles the EXEMPTION FROM TAXATION sections to be applicable to bonds authorized by both counties and municipalities and updates statutory references.

Section 15: recompiles the CONSTRUCTION OF ACT sections to be applicable to counties and municipalities and updates statutory references.

Section 16: recompiles the NO NOTICE OR PUBLICATION REQUIRED sections and updates statutory references.

Section 17 provides that the Industrial Revenue Bond Act shall be liberally construed to carry out its purpose. Section 3 of the act is clear that the purpose is to promote industry and trade and promoting the use of the agricultural products and natural resources of this state and promoting a sound and proper balance in the state between agriculture, commerce and industry. This may be a directive for local governments to ignore the constitutional anti-donation clause. However, any breach of the anti-donation clause must be strictly according to the Local Economic Development Act (LEDA).

Section 18 is a temporary section (not to be compiled) that retains all rights, duties and obligations arising pursuant to any provisions of Chapter 4, Article 59 NMSA (1978) that are repealed in this bill. A similar hold harmless is not provided for any of the sections of Chapter 3, Section 32 that are repealed.

Section 19 repeals sections duplicated in the precursor Industrial Revenue Bond Act (Chapter 3, Section 32 NMSA 1978) and the County Industrial Revenue Bond Act (Chapter 4, Section 59 NMSA 1978). Section 3-32.51 NMSA 1978 is repealed and not reinstated in the provisions of this bill. Section 3-32.51 NMSA 1978 allowed small communities to issue IRBs for physician's offices in spite of the fact that these physicians were operating for-profit.