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FISCAL IMPACT REPORT

ORIGINAL DATE 2/6/22

SPONSOR Ivey-Soto/Padilla LAST UPDATED 2/12/22 HB _____

SHORT TITLE Special District Elections & Taxes SB 178/ec/aSRC

ANALYST Graeser/J.Torres

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY22	FY23	FY24	FY25	FY26		
Bill has emergency clause, but fiscal effects are highly uncertain, depending on utilization					Recurring	General Fund (TIDD GRT)
Bill has emergency clause, but fiscal effects are highly uncertain, depending on utilization					Recurring	PID – property tax
Bill has emergency clause, but fiscal effects are highly uncertain, depending on utilization					Recurring	Local Gov’t TIDD GRT

Parenthesis () indicate revenue decreases

May relate to SB169, which provides \$100 thousand appropriation to allow University of New Mexico, Bureau of Business and Economic Development to study the economic and fiscal impacts of the Santolina Development.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration, Local Government Division (DFA/LGD)

Municipal League (ML)

Office of the State Auditor (OSA)

SUMMARY

Synopsis of SRC amendment

Senate Rules Committee amendments of Senate Bill 178 makes the following changes:

For PIDs, makes a technical change to emphasize that the appointed district board may impose a property tax. The amendment does not alter the requirement that the district board members are selected from the elected members of the governing body. The district board is granted the authority to designate boundaries of districts for the imposition of a property tax.

For TIDDs, the amendments are more substantive. The amendment substantially alters the composition of an appointed district board. The sponsoring governing body may appoint a five-member district board which is granted substantial decision-making authority outside of the ability to impose the limited property tax allowed in the TIDD act. Two members of this appointed board

are selected solely on the nominations by the developer; one member would be appointed by the sponsoring governing body, one member would be named by the secretary of finance and administration and the final member would be negotiated between the governing body and the developer. This amended board composition would not be allowed if the governing body approved or intended to approve the issuance of a private activity (income tax exempt) bond.

Synopsis of Original Bill

Senate Bill 178 (emergency clause) proposes significant changes to the Public Improvement District (PID) Act (Section 5-11-1 et seq. NMSA 1978 and the Tax Increment for Development District (TIDD) Act (Section 5-15-1 et seq. NMSA 1978). The overall impact of the bill provisions will be to increase utilization of both of these instruments and to give developers more authority over decision making and flexibility with respect to utilization. An important provision would be that a developer, by petition, could negate the authority of a governing body or the PID or TIDD district board or administrative committee to increase the authorized property tax.

Significant changes include

- A property tax supporting PID and TIDD bonds can only be imposed by the governing body of the sponsoring government, following an election where three quarters of the owners approve the imposition of a property tax and the dedication of revenues from that dedicated tax to repaying PID or TIDD bonds. An administrative committee appointed by the governing body is charged with day-to-day management of the PID or TIDD, but cannot approve the property tax levy or the issuance of bonds supported by the property tax;
- PID and TIDD governing boards or administrative committees responsible for acting on behalf of the sponsoring governing body would be appointed by the sponsoring governing body. The PID board would consist of five members of the elected governing body, two of whom would be members nominated by the developer; the TIDD district board would be named
- PID and TIDD boards or administrative committees would be subject to the state Procurement Code or a local procurement code, except for expenditures directly related to the construction of public improvements pursuant to the PID Act or the TIDD Act;
- A political subdivision of the state that is not a county or a municipality can form a TIDD. It is uncertain if this means a school district, higher education facility, water and conservation district, or a public improvement district could form a TIDD;
- Although implicit in the current PID and TIDD provisions, a developer, using the proposed provisions, can impose future property tax obligations on purchasers of real property within the created PID or TIDD areas to reimburse the developer for site preparation and infrastructure costs; and
- Allows a PID or TIDD to contract for a separate annual or special audit. Such component audits would be included in the audit of the primary government entity.

This bill contains an emergency clause and would become effective immediately upon signature by the governor. Section 24 makes the change in composition of the PID or TIDD board effective January 1, 2024. Section 25 makes the exemption to the Procurement Code(s) applicable July 1, 2022.

FISCAL IMPLICATIONS

The changes to both PIDs and TIDDs may result in greater utilization of these programs. In the

case of PIDs, the probable result is that developers will form a PID or TIDD or both when these developers own at least three-quarters of the property within a district (either measured by acreage or by property tax net taxable value). Once the PID or TIDD imposes a property tax, the levy is attached to the property when it is sold. If the developer purchases the bonds, (no matter how rated) that developer insures that infrastructure development costs will be paid over time by the purchasers of real property within the district. Providing the authority to a developer to petition for either a PID or TIDD gives maximum flexibility to the developer to accelerate development and increase returns to investment in the developed project.

The PID Act anticipates the imposition of an additional (incremental) property tax. The TIDD Act allows the imposition of an additional property tax. However, this authority would rarely be used, since the TIDD Act allows dedication of a portion of local option gross receipts taxes, and, with board of finance approval, dedication of a similar portion of the state gross receipts tax. This gross receipts tax dedication means any expenditures for infrastructure development or project construction would generate an immediate return to the TIDD and subsequently to the developer. With property taxes, there would be a significant delay between the expenditure and return through the incremental property tax dedicated to the PID or the additional or incremental dedicated property tax.

The fiscal effects of this bill are indeterminate both in timing and in magnitude.

OSA notes there may be a possible fiscal impact as the proposed legislation may result in additional audit costs for some component units or primary governments. For example, most charter schools are included in the public education department financial statements, therefore the school districts that authorized the components may experience increased costs for a stand-alone report. The estimated expected increase relies on current audit costs relevant to the size and complexity of the entity but may be about 10 percent of current audit costs for both the component unit and the primary government.

SIGNIFICANT ISSUES

Attached as an appendix is a section-by-section description of the TIDD changes. LFC staff are not qualified to understand the full ramifications of the provisions of this bill and recommend a thorough review by those better able to understand these ramifications such as the attorney general or DFA.

The overall tenor of these substantial changes to the governance and property tax authority of PIDs and TIDDs may be the result of an effort of a PID or TIDD board to increase the property taxes imposed on a developer. This bill was introduced with an emergency clause, which would mean that a developer could petition a current PID or TIDD board for a reduction in imposed property taxes.

DFA/LGD included proposed language in the proposed amendments section to increase fiscal accountability of components.

The state auditor requests acknowledgement of a conflict with other statutes and rules and suggests an amendment (see proposed amendments), stating: “Section 23 of the proposed legislation includes proposed amendments to the Audit Act at NMSA 1978, Section 12-6-3(B) to add a new Paragraph F. Lines 1-6 on page 85 of the proposed legislation would allow a government component unit to be audited separately from its primary government entity. Currently, the Audit

Rule (which is promulgated by the OSA to ensure audits are conducted in accordance with generally accepted auditing standards), at 2.2.2.10(A)(1)(c) NMAC, requires component unit(s) to be audited by the same audit firm that audits the primary government (except for public housing authority component units that are statutorily exempt from this requirement, and the statewide comprehensive annual financial report). Requests for exemption from this requirement are required to be submitted in writing by the primary government to the State Auditor.”

Preparation of the Statewide Financial Report (Report) requires the Independent Public Auditor of the Report to follow group audit standards (AU-C 600), which require the auditors to evaluate the component auditor’s work and their reputation (including a review of their peer review), auditors should not be required to accept other audits and reference the other audit, as this may impact the auditor's opinion.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

OSA notes a conflict with the Conflict with Audit Rule and Generally Accepted Auditing Standards – see detail in “SIGNIFICANT ISSUES”.

SB178 may relate to SB169, which provides a \$100 thousand appropriation to allow UNM, Bureau of Business and Economic Development to study the economic and fiscal impacts of the Santolina Development

TECHNICAL ISSUES

Section 18 seems to allow the dedication of all municipal, county, and county area gross receipts local option taxes. However, there many local option taxes that were excluded from the de-earmarking of 2019’s HB479. These dedicated local option taxes should not be included in the TIDD dedication. Additionally, local governments issue revenue bonds based on designated gross receipts tax rates. These bonds are subject to covenants that the revenue stream so dedicated cannot be impaired. Section 18 should be amended to resolve both of these issues.

Section 19 does not clearly distinguish between operating and debt levies that may be dedicated. All debt is issued subject to covenants that prohibit any impairment of the provisions dedicating certain revenues to the repayment of that debt. It is not clear whether the appointed TIDD district board may require dedication of property tax increment of other taxing entities besides the sponsoring governmental entity.

OTHER SUBSTANTIVE ISSUES

The PID formation process pursuant to the bill provisions is detailed below

1. Twenty-five percent of property owners by net taxable value petition governing body to form a PID;
2. Governing body considers the petition and approves or disapproves the petition; if approved, creates a resolution and schedules a hearing;
3. Following the hearing, the governing body may determine a district should be formed, and may modify boundaries; pursuant to a resolution the governing body schedules a formation determination election. This resolution must reference the likelihood that the PID will involve a property tax increase and that the revenues from the property tax increase be dedicated to repaying a bond issued for the purpose of creating public improvements such as water and

sewer lines, roads, street lighting, parks, and similar projects. The resolution must also note that the members of the sponsoring government's governing body would form the board of the PID and the governing body would appoint an administrative committee for day-to-day administration. Two of the five member administrative committee would be nominated by the developer;

4. If all property owners owning property within the proposed PID agree, an election on the formation of the district may be waived. Barring the waiver, if three quarters of the property owners based on one vote per 1/5th acre approve the formation, then an election of all eligible electors registered in the proposed district would be scheduled; and
5. The formation election, the imposition of a property tax and the issuance of a bond and dedication of property tax revenue to repayment of that bond may be held at the same time or separately. A three quarters majority of votes is required to approve the district formation, imposing the property tax or issuing bonds. If all owners of property agree, then election notice requirements may be waived. If there are no registered voters within the proposed district, then any required election is cancelled and the determination of the owners shall prevail.

The Santolina approved tax increment development district plan involves 19 (or 20) tax increment districts with disparate boundaries. The boundaries of these districts could be adjusted pursuant to the authority granted by the bill provisions to exclude any registered voters. In that eventuality, the property owners could approve the imposition of property taxes, dedicate those additional property taxes and the approved increment of property taxes and gross receipts taxes to repayment of TIDD bonds. Two members of the appointed TIDD board would be nominated by the developer and strongly influence the decisions of the board.

PROPOSED AMENDMENTS

DFA/LGD had the below proposed amendment which would add language to Section 12-6-3 NMSA 1978: "The financial affairs of a political subdivision of the state that is determined to be a component unit of a primary government entity in accordance with generally accepted accounting principles may be audited separately from the audit of the component unit's primary government entity. If the primary government entity or the component unit chooses to have a separate audit conducted, the component unit audit shall be included in the primary government entity's audit but need not be conducted by the same auditor that audits the financial affairs of the primary government entity. The auditor for the primary government entity shall accept the audit performed by the auditor selected by the component unit."

OSA recommends the bill's proposed language in lines 1-6 on page 85 be removed or modified to comport with the Audit Rule, as even if the language is removed, the Audit Rule language in existence already allows for the process upon approval.

OSA goes on to explain why it proposed this amendment: The proposed new provision at lines 6-8 of page 85 has the potential to conflict with AU-C 600 (AICPA) Group Audit Standards. This professional standard, also referred to and required to be followed in the Audit Rule, provides an auditor with the option to either assume responsibility or not assume responsibility for the audit of a component auditor in conjunction with a group audit. This decision is based on specific professional criteria. The currently proposed language is ambiguous and does not allow an auditor a choice as allowed by professional standards. Additionally, the currently proposed language does not appear to provide any added benefit to audits. Please consider modifying existing sentence to allow professional consideration. One suggestion is "The auditor for the primary government may

assume responsibility for the audit performed by the auditor selected by the component unit in accordance with professional standards.”

OSA also states that the legislation should outline approval from the component unit oversight agency of change to the due date which must then be earlier than that of the primary government.

POSSIBLE QUESTIONS

<p>Does the bill meet the Legislative Finance Committee tax policy principles?</p> <ol style="list-style-type: none"> Adequacy: Revenue should be adequate to fund needed government services. Efficiency: Tax base should be as broad as possible and avoid excess reliance on one tax. Equity: Different taxpayers should be treated fairly. Simplicity: Collection should be simple and easily understood. Accountability: Preferences should be easy to monitor and evaluate.
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<p>Does the bill meet the Legislative Finance Committee tax expenditure policy principles?</p> <ol style="list-style-type: none"> 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, to review fiscal, legal, and general policy parameters. Targeted: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals. Transparent: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies. 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. 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. Efficient: The tax expenditure is the most cost-effective way to achieve the desired results.
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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		

Attachment

1. Partial Section by Section of the TIDD sections of this bill

Attachment 1:

Partial Section by Section of the TIDD sections of this bill:

Section 12 Definitions: – clearly moves Los Alamos into the category of “county” and excludes LA from the definition of “municipality.” The definition of “public improvements” for TIDD purposes is somewhat expanded to allow the public improvements created through the TIDD mechanism to be dedicated and transferred to “other political subdivisions.” This may mean that Soil and Water Conservation districts could sponsor a TIDD. This inclusion is not well understood by LFC staff and should be reviewed by competent authority.

Section 13 Formation Determination and Election: adds: “modification of the boundaries of a tax increment development area” and deletes: “selection of a district board member”. This anticipates that the TIDD board would be appointed and not elected. This may conform TIDD governance to current practice in which a TIDD board is primarily appointed by the sponsoring government with a single seat being granted to the DFA. This formation determination may be waived if all of the property owners agree to that waiver. Elections are required for formation of a new district, modifying the boundaries of a tax increment district, the levy of a property tax on property within the district or issuing property tax bonds to be repaid by the property tax increments. There are seemingly two separate property tax issues: (1) when the TIDD is formed, the sponsoring government entity dedicates a portion of property taxes collected on the increase in net taxable value created by the development and revenue raised from the dedication is used to reimburse the developer for upfront costs of infrastructure and other public improvements. Since the public improvements are transferred directly to the sponsoring government unit, this value is exempt and does not generate a property tax increment; (2) this section authorizes an election where property owners and residents within the boundaries of the district may impose a new property tax levy up to \$5 per \$1,000 of net taxable value on all property (see Section 17) within the boundaries of the district, not just the incremental increase. This new, voter-approved levy may be bonded as well as the incremental property tax. Ultimately, for green-field development, a developer could expand the boundaries of an existing TIDD, establish a property tax increment, which would be modest on undeveloped land, but the increment would entail further sales and require payments pursuant to the property tax levies for up to 30 years in the future. This may be a way of bootstrapping public improvements and infrastructure. If the developer bought the bonds, then this would be a means of getting future participants in the district to pay for the infrastructure development over and above the price paid for real property.

Section 14 Formation as a District: (3) currently requires notice of the formation to any other taxing district (such as a PID) contiguous with the TIDD. This provision is deleted.

Section 15 Governance of the District: this moves the governance of the district from direct control of the sponsoring district to substantial participation in decisions made by the board on behalf of the developer. Two positions on the 5-person appointed board would be nominated by the developer, with no required concurrence of the sponsoring government or the other three governmental members of the board. In addition, the previous election required by current statute at the end of the five-year period of appointment of all members of the board is repealed. The board would be entirely appointed by the governing body or nominated by the developer.

Section 16 District Powers: this section anticipates that the appointed district board could appoint an administrative committee to act on behalf of the board. The district board or the appointed

administrative committee would be accorded control of all powers granted to the board except for levying a property tax. A property tax levy would still require an election of “qualified electors”, but if no voters were registered within the boundaries of the district, then property owners in the district would be allowed to impose the property tax. This is as provided in Section 13 of this bill (Section 5-15-8 NMSA 1978) with one vote for each 1/5th acre (rounded up) of ownership. Section 16 modifies the exemption in current statute from the Procurement Code or local procurement code. In general, the board would be bound by the provisions of the procurement codes except for the following: (1) entering into or supplementing a development agreement; (2) expending TIDD money, however derived, to reimburse a developer for costs of public improvements; and (3) purchases of goods or services made by the district related to public improvements.

Section 17 Property Tax Levy: a maximum property tax levy of \$5 per \$1,000 of net taxable value may be imposed by the district board. This imposition requires confirmation by registered voters in the district or, if no persons are registered to vote, the owners of property within the district vote based on one vote for each 1/5th acre (rounded up) – Section 13 of this bill.

Section 18 Gross Receipts Tax increment: apparently allows the dedication of all municipal local option taxes imposed on the gross receipts tax increment above the base amount determined at the time the dedication was approved. Increments of amount of municipal distributions for the 1.225 percent required by 7-1-6.4 NMSA 1978 and the food and medical hold harmless distributions of 7-1-6.46 NMSA 1978 would also be dedicated. This conforms the TIDD provisions to the de-earmarking of 2019’s HB 479. This section also apparently allows the dedication of all county and county area local option taxes imposed on the gross receipts tax increment above the base amount determined at the time the dedication was approved. There are a number of earmarked county taxes that would not be suitable for dedication as TIDD revenues. Many jurisdictions issue revenue bonds

Section 19 Property Tax Increment Bonds: this section deletes the requirement that the entity imposing a base property tax levy approve the dedication of a property tax increment to the TIDD. This provision might affect state GO bonds, school district operating, school district debt, municipal operating, municipal debt, county operating, county debt, higher education voter-approved levies, special district levies and public improvement district (PID) levies. It is not clear whether the district board appointed by the sponsoring government entity can impose the dedication of 75 percent of the operating levy on any other taxing jurisdiction or on debt of the sponsoring entity. Per title of the bill, only the sponsoring government can impose this property tax.

Section 20 General Bonding Authority: technical change.

Section 21 Modifications of Tax Increment Development Area Boundaries or Tax Increment Development Plan: provides for withdrawal of property from a TID district with the requirement that any property so withdrawn still be responsible for repayment of that property’s share of any property tax bonds issued.

Section 22 Base Year Revision: technical change.

Section 23 Annual and Special Audits: allows a separate audit of a political subdivision of the state, but requires the component unit’s audit to be included in the primary government’s audit. The auditor for the primary government must accept the separate audit of the component subdivision. DFA comments on this.

Section 24 Temporary Provision: cancels all existing board memberships effective December 31, 2023 and establishes that the membership on the new board, that includes two members nominated by the developer, begins January 1, 2024. This section quotes the constitutional election requirement (Article 20, Section 3) with respect to terms of office of elected officials and argues that this cancelation of all board memberships is necessary “to align the elections with the Local Election Act ..., to ensure the efficient administration of elections and to increase clarity for voters.”

Section 25 Applicability: relief from the procurement code(s) would apply to procurement initiated on or after July 1, 2022.