FISCAL IMPACT REPORT

		LAST UPDATED	
SPONSOR	HCEDC	**ORIGINAL DATE**	2/17/23
SHORT TITLE	Improvement Special Assessment Act	**BILL NUMBER**	CS/House Bill 228/HCEDCS
		ANALYST	Graeser

REVENUE
(dollars in thousands)

FY23	FY24	FY25	FY26	FY27	Recurring or Nonrecurring	Fund Affected
	Indeterminate but minimally positive	Indeterminate but minimally positive	Indeterminate but minimally positive	Indeterminate but minimally positive	Recurring	Sponsoring Counties/Municipalities

Parenthesis ( ) indicate revenue decreases.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT
(dollars in thousands)

FY23	FY24	FY25		3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
$50.0	$50.0			$100.0	Nonrecurring	
	>$200.0	>$200.0		>$400.0	Recurring	EDD
	Minimal*	Minimal*		Minimal*	Recurring	Adopting Counties

Parenthesis ( ) indicate expenditure decreases.
* Counties have minimal duties assigned in the bill if EDD assumes the program administrator role.

Relates to Senate Bills 251 and 303 and House Bill 310

Sources of Information

LFC Files

Responses Received From
Economic Development Department (EDD)
Energy, Minerals and Natural Resources Department (EMNRD)

SUMMARY

Synopsis of HCEDC Substitute for House Bill 228

The House Commerce and Economic Development substitute for House Bill 228 (HB228/cs) proposes a new financing mechanism to encourage improvements that improve resilience, energy efficiency, or water conservation projects on existing properties. For new developments, eligible improvements would enable the property to exceed the energy efficiency, water conservation, renewable energy, renewable water, or resilience requirements of the applicable building code.

An eligible property is a privately owned commercial, industrial, agricultural, or multifamily residential real property with five or more dwelling units. To establish this improvement special assessment program, a board of county commissioners would enact an ordinance establishing a program in which improvement loans would be repaid by special assessments on eligible property benefitting from those financed improvements. The funds to be used for the improvements would be provided by private interests and would bear appropriate interest. The loans would be serviced by the capital provider, not the county. The county would have little input into the process beyond recording the special assessment and the associated lien, although a county employee could be designated as the program administrator. The improvement special lien is superior to all other liens except property tax liens and other or previous improvement special liens coequal with property tax liens. This means the improvement special lien would be superior to an underlying m mortgage lien. In the case of default, the mortgagor would have to clear the improvement lien totally before foreclosing on the property.

Counties that intend to utilize this mechanism would be required to pass an ordinance to establish a program. A county ordinance may apply within a municipality if the municipality adopts a resolution or ordinance approving the application of the county's ordinance. Counties would need to include various criteria set out in the bill, as well as anything required by the program guidebook to be created by the Economic Development Department (EDD).

Approval of a special assessment agreement would require a property owner to submit a project application to the project administrator. The "program administrator" may be EDD, the county, or a third party. The program administrator would certify the proposed eligible improvements, eligible property, and property owner qualify for financing pursuant to the program. Capital providers shall provide and directly disburse special assessment financing to fund eligible improvements, subject to a special assessment financing agreement.

The bill allows the sponsoring county or other jurisdiction to charge an administrative fee not to exceed the lesser of 1 percent or $25 thousand. EDD would be required to create and make available on its website a program guidebook governing the terms and conditions under which financing for special assessments may be made available through the program.

EDD may elect to serve as a program administrator and may contract with a third party to assist with administration. The board of county commissioners may authorize a department or official of the county as program administrator and can utilize a third party. Any combination of counties may agree to jointly administer a program pursuant to a memorandum of understanding.

The bill also repeals Solar Energy Improvement Special Assessment Act (Sections 4-55C-1 through 4-55C-9 NMSA 1978.

This bill does not contain an effective date and as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed. EDD is required to prepare the program guidebook within 90 days of enactment.

FISCAL IMPLICATIONS

The bill’s provisions do not constitute a tax expenditure. Depending on uptake, sponsoring jurisdictions would receive a minimal amount of revenue to compensate for the recording of the improvement district lien and administration of applications. As noted above, however, the bill assigns counties minimal duties and an administrative fee may be unwarranted.

EDD notes a significant unfunded mandate related to the preparation of the required program guidebook. This guidebook would have to be created within 90 days of the effective date of the bill, irrespective of whether any jurisdictions elect to form one of the improvement special districts. (See “Administrative Implications” for discussion.)

SIGNIFICANT ISSUES

LFC notes the revised financing mechanism is little different from a home improvement loan from an existing bank or other capital provider. The addition of a project administrator and the requirement for counties to perform certain duties may make these loans more expensive for borrowers. The capital providers would set interest rates based on the credit worthiness of each individual borrower.

EMNRD reports:

> For EMNRD, HB228/cs primarily relates to financing tools that help pay for clean energy and energy efficiency projects. EMNRD sees HB228/cs as an improvement on, and perhaps an alternative solution to, the current Commercial Property Assessed Clean Energy (C-PACE) statutes operative in New Mexico. C-PACE uses borrowed capital to pay for the upfront costs associated with energy efficiency or renewable energy improvements. Unlike other financing, the borrowed capital is repaid over time via a voluntary tax assessment. HB228/cs sets up a similar structure, without the tax assessment provision.
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> EDD received an appropriation in 2021 to assess the existing C-PACE program in New Mexico and determine necessary actions to make it functional and ease implementation if new legislation should pass. As a result of that effort, EDD made several recommendations, many of which are addressed by HB228/cs.
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> HB228/cs responds to county objections on the original bill over special assessment billing and collection.
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> In repealing the solar energy special improvement assessment act, HB228/cs also responds to concerns from homeowners who expressed difficulties with reselling properties on which there had been a special assessment for onsite solar. As expressed in the recent EDD study, any new law should clarify that the special assessment is separate from the property tax for purposes of enforcement by a third party prior to foreclosure. In addition, it should clarify that C-PACE assessment payments not yet due are not accelerated nor extinguished upon the transfer or foreclosure of a property.

Most of the following recommendations based on the EDD study of the C-PACE financing mechanism are addressed by HB228/cs:

1. Expand eligible improvements to include energy efficiency, water conservation and resiliency and authorize C-PACE financing to be used for new construction and retrofits of existing buildings;
2. Specify a direct lending model;
3. Articulate the role of local governments;
4. Articulate options for program administration structure;

5. Classify C-PACE special assessments, which includes (a) specifying that C-PACE special assessments must be imposed *by a local government* as an assessment and not a tax (County improvement districts (§ 4-55A NMSA), which are billed, collected, and enforced at the local level and do not roll up to the state, are a better model for C-PACE in New Mexico.); (b) making C-PACE special assessments junior to *ad valorem* property taxes (In the structure described above, it is important to bifurcate lien priority of *ad valorem* taxes from C-PACE special assessments to allow for the seamless execution of a differing enforcement procedure by third parties, which may take place prior to the foreclosure of a property tax lien.); and (c) explicitly stating that future C-PACE assessment payments not yet due are not accelerated nor extinguished upon the transfer or foreclosure of a property;
6. Require lender consent; and
7. Establish minimum uniformity standards for C-PACE application procedures.

Of these recommendations, only item 6 has not been included in HB228/cs. Unfortunately, the failure may render the Improvement Special Assessment Act as unacceptable to the market as the existing C-PACE program. The problem is not with the capital provider for the improvement special assessment but with the bank or capital provider for the underlying mortgage.

HB228/cs is similar to the special assessment for public improvement districts (PID). PIDs usually involve installing electric, water, or sewer lines for the use of a number of private properties. The voluntary special PID assessment is collected by the county treasurer with regular semi-annual property tax payments and then these special assessments are used to make periodic payments to the providers of capital used to build the public improvements. Critically for PIDs, all properties fronting the public improvements benefit and pay the assessments, whereas only specific properties would benefit from the provisions and would bear the entire burden of the assessment.

The HB228/cs improvement special district proposal differs significantly from a conventional PID. Section 3 (A) of the bill states that these projects should be deemed in the interest of public health, safety and welfare. This defines energy and water conservation and resiliency projects on private properties as public benefits. However, the real benefits from the proposal are restricted to the private properties where the energy efficiency, water conservation, or resiliency projects are installed. In the case of a PID, a supermajority of the property owners must approve the voluntary assessments allocated among the various property owners. This proposal allows a county to designate an improvement special district without a vote of the affected property owners, so that only "eligible properties" would benefit and voluntarily agree to pay the special assessment.

Two other features of the proposal may be relevant:

1. In Section 5(D), "a special assessment lien runs with the land." A developer could apply for an improvement special assessment for a single parcel, build the eligible improvements, and sell the property with the lien in place. Subsequent owners of the property would be obliged to pay the special assessment until the loan was repaid.
2. In Section 2 (F), "'eligible property' means any privately owned commercial, industrial, agricultural or multifamily residential real property with five or more dwelling units, including real property owned by an entity formally recognized as tax exempt." Federally, tax-exempt properties [i.e., 501(c)(3), 501(c)(4), or 501(c)(6)] are

generally property tax exempt if their activities are educational or charitable. However, these properties are not exempt from the special assessments proposed in this bill.

Previous proposals to use property tax administration as a financing tool failed because of a hierarchy-of-lien issue or an issue in case of default of conventional mortgage loan, a tax lien, or the special assessment lien. Because the special assessment lien would only cover a portion of the capital required for most projects, the capital provider would be interested in this hierarchy. Section 5, Paragraphs C and D provide:

> A special assessment lien shall be effective during the period in which the special assessment is imposed and shall have priority superior to all liens, claims and titles except a lien for general ad valorem property taxes or an improvement district lien that is coequal to property taxes. D. A special assessment lien runs with the land, and that portion of the special assessment lien that has not yet become due is not accelerated or eliminated by foreclosure of the special assessment lien or any lien for taxes or assessments imposed by the state, a local government or taxing district against the property on which the special assessment lien is imposed.

As mentioned above, this special assessment lien is superior to mortgage liens. In case of a default and foreclosure of the mortgage loan, the bank or other capital provider would be obliged to pay the assessment and any subsequent owner of the underlying property, including the eligible improvements, would also be obliged to continue the payments. This would be a good deal for the capital provider for the eligible improvements and a bad deal for the bank carrying the underlying loan. Previous proposals to provide alternative financing methods have not been acceptable to the market. This proposal, too, may not be acceptable to the market because the improvement special lien is superior to an underlying mortgage lien.

ADMINISTRATIVE IMPLICATIONS

EDD notes:

> This bill creates an unfunded mandate for EDD that it would not be able to fulfill without \$200 thousand recurring funding for FTE and \$100 thousand nonrecurring funding to create the guidebook.
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> Under the bill, EDD will be required to create and distribute a program guidebook within 90 days of the bill's enactment. Additionally, EDD may need to be the project administrator for the program. EDD reports staff's workload is already overloaded with office space at capacity. As such, EDD would require additional full-time employees (FTE) to effectively complete the scope of work within this bill. An estimated minimum of 2 FTE would be required to effectively maintain and promote this program, with that number to potentially increase over time based on program growth rate. The need of additional office space would further increase the operating budget. The minimum estimated operating budget needed would be \$200 thousand per year without the cost of office space included. Furthermore, the 90-day turn around required to create and make available the program guidebook may be too short as EDD states it would need to bring on additional employees and office space.

LFC notes preparing the guidebook is required even if no counties implement the program. Because of the issues discussed above, the proposal may not be acceptable to the market and few or no counties may implement this mechanism. Only if the mechanism were widely adopted and EDD were the program administrator for the bulk of the county programs would there be a recurring need for additional FTE at EDD.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB303, and its duplicate HB310, proposes changes in governance of PIDs and TIDDs.

SB251 proposes a significant conversion of Metropolitan Redevelopment Act provisions to add state and local gross receipts taxes to the incremental taxes diverted to servicing MRA bonds.

LG/rl/hg