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FISCAL IMPACT REPORT

LAST UPDATED _____
ORIGINAL DATE 3/9/23

SPONSOR Sharer

BILL

SHORT TITLE Municipality Street Improvement Charges **NUMBER** Senate Bill 457

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25	FY26	FY27		
Indeterminate; depends on uptake					Recurring	Municipal Street Funds

Parenthesis () indicate revenue decreases.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
May be significant				Recurring	Adopting Municipalities

Parenthesis () indicate expenditure decreases.

Sources of Information

LFC Files

Responses Received From

Department of Transportation (NMDOT)

No Response Received

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

New Mexico Municipal League (NMML)

New Mexico Counties

SUMMARY

Synopsis of Senate Bill 457

Senate Bill 457 enacts a new section of the Municipal Code to allow a municipality to levy, by general ordinance, a service charge for the purpose of maintaining, extending, enlarging, constructing, and repairing streets. The service charge would apply to an improved or unimproved lot or land that adjoins a street or is accessible to such a street and to premises and improvements otherwise situated but connected to a street. SB 457 also authorizes the municipality to enforce the charge as a personal liability of the owner of the property through a lien. This authority parallels that allowed to municipalities for sewers, water lines, and electrical lines pursuant to 3-23, 3-24, 3-25, and 3-26 NMSA 1978. The fees charged may be used to pay the principal and interest on revenue bonds. This lien is “co-equal with a similar lien and

superior to all other liens except general property taxes upon the property so charged and is a personal liability of the owner of the property so charged.”

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.

FISCAL IMPLICATIONS

NMDOT does not expect any fiscal impact on the agency because state and federal streets, roads and highways are not subject to municipal jurisdiction.

SIGNIFICANT ISSUES

NMDOT points out an issue:

SB457 does not address whether the service charge would be applicable to property within the jurisdictional boundary of a municipality but not within the municipality’s planning and platting jurisdiction or to parcels outside the municipality boundary but abutting a municipal street. The bill’s intent could be clarified. See “Amendments” below.

LFC staff note the hierarchy of the proposed lien in case of nonpayment of the service charge is established in the bill, but it is not clear the extent of the phrase “coequal with a similar lien.” This may be an internal conflict with, among others, 3-26-2 NMSA 1978:

Any charge authorized [for the provision of sewer services] ... is a lien co-equal with a similar water lien and superior to all other liens except general property taxes upon the property so charged and is a personal liability of the owner of the property so charged. The lien shall be enforced as provided in Sections 3-36-1 through 3-36-7 NMSA 1978.

The provisions of this bill are reminiscent of imposition and lien procedures pursuant to Public Improvement Districts (Section 5-11-1 NMSA 1978), where a group of property owners can self-impose an obligation to pay for a share of public improvements, such as water, sewer, or electric utilities. 5-11-2 (P)(4) NMSA 1978 allows “highways, streets, roadways, bridges, crossing structures and parking facilities, including all areas for vehicular use for travel, ingress, egress and parking” as a permissible use of a public improvement district (PID) financing mechanism. What distinguishes this proposal from a PID is that the property owners in the area of the streets or roads covered by this proposed fee have no vote or other say in the imposition or have any control over whether these properties receive any benefits directly related to the imposed fees for which the property owners are required to pay, In any event, this can function as a general tax and not a benefits-received fee.

ADMINISTRATIVE IMPLICATIONS

The provisions of this bill may cause administrative issues for DFA/LGD because these provisions create an enterprise revenue stream outside of the usual utility enterprise revenue, where there is a direct relationship between services received and payments. Enterprise revenues are generally fees for defined services, and these fees are generally not used to pay principal and interest on revenue bonds. Establishing “a just and reasonable service charge upon a front-foot, volume-of-street or other equitable basis” is not a trivial task.

TECHNICAL ISSUES

The internal conflict in lien hierarchy should be resolved.

PROPOSED AMENDMENTS

NMDOT suggests the following amendments to SB457 to clarify the intent for the special charges to apply only to property, premises, and improvements subject to municipality jurisdiction:

Change Section 1 (A) (1), page 2 line 3 to read “(1) an improved or unimproved lot or land within the municipality’s planning and platting jurisdiction that”

Change Section 1 (A) (2), page 2 line 5 to read “(2) premises and improvements located on and under the jurisdiction of the municipality and otherwise”

NMFA might have additional suggestions on the revenue bonding authority granted in the bill.

OTHER SUBSTANTIVE ISSUES

Traditionally and generally, roads and streets within municipal boundaries have been financed through a mixture of various grants generated by the Department of Transportation and local revenues. The governing body uses these financing sources and allocates funding for projects in a relatively even-handed manner around the municipal boundaries. This bill proposes a mechanism to turn roads and streets into a benefits-received mechanism, where the nearby users of a new or newly repaired street would be obligated to pay for those improvements. This solves a headache for the governing body and imposes that headache on the benefitting property owners. The difference is that roads and streets are not exclusively used by nearby residents and these residents subsidize through the fees the use of the streets and roads by users not contributing to those public goods.

LG/al/hg