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

SPONSOR Lujan, B. **ORIGINAL DATE** 2/14/07 **LAST UPDATED** 2/28/07 **HB** 1088/aHBIC

SHORT TITLE Mesa Del Sol Development Gross Receipts **SB**

ANALYST Francis

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	**FY08**	**FY09**		
	* See Narrative			

(Parenthesis ( ) Indicate Revenue Decreases)

Duplicates SB839 except title

SOURCES OF INFORMATION
LFC Files
Taxation and Revenue Department (TRD)
Mesa Del Sol, Inc/Forest Covington
State Land Office (SLO)
City of Albuquerque
Department of Finance and Administration (DFA)

Responses Received From
Commissioner of Public Lands (CPL)
Department of Finance and Administration (DFA)
New Mexico Finance Authority (NMFA)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of HBIC Amendment

The House Business and Industry Committee amended House Bill 1088 by prohibiting capital outlay authorizations for projects within Mesa del Sol increment development district during the period when tax increment bonds are outstanding. Exceptions to the prohibition include buildings owned by the state or agencies, institutions or political subdivisions that are for public schools, higher education, cultural buildings or facilities, buildings used for public safety or building used for other purposes. See “Technical Issues” below for an analysis of the amendment.

Synopsis of Original Bill

House Bill 1088 authorizes bonds issued by Mesa del Sol, a tax increment for development district, secured by 75 percent of the gross receipts tax revenue generated within MdS. The maximum issuance is $500 million and subject to:

1. a determination by New Mexico Finance Authority (NMFA) that the proceeds of the bonds are used according to the development plan
2. review of the master indenture by NMFA
3. review of any proposed amendments to the master indenture prior to issuance.

There is an emergency clause so the authorization will be immediate upon passage and signing by the Governor. The duration of the authorization is unlimited unless modified or repealed by the legislature.

The Tax Increment for Development Act was enacted in 2006. This act allows property owners within an area that is a subset of a city or county to form a special district for development (TIDD). A district would propose a plan of infrastructure investments that would encourage economic development among other goals that would be paid for out of the increased revenue from the development. This increment comes from either increased property taxes or increased gross receipts taxes. The property tax is the smallest component of the potential increase since property taxes are generally low in New Mexico and much of the revenue is already dedicated to debt service constitutionally. It is the gross receipts tax where the increment is important and particularly the state share of the gross receipts tax.

MdS materials:

> Mesa del Sol is a master planned development which will include a mixed use of industrial, commercial, and residential properties. In its first phase involving 3,082 acres over $2.4 billion is expected to be invested in the construction of public infrastructure as well as in housing, commercial and industrial buildings and related improvements.
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> This first phase will include 8,136 residential units, 6.25 million square feet of industrial/commercial/retail space, and $600 million in public infrastructure such as roads, water/sewer lines, and drainage.

SUMMARY

- **Mesa del Sol Tax Increment for Development District will receive 75 percent of all state gross receipts tax revenues generated within the district.**
- **Mesa Del Sol projections indicate a net positive fiscal impact on the state of $38 million over 25 years. Fiscal impact positive in the first fifteen years and negative in the last ten years.**
- **After 25 years, revenues begin returning to state general fund.**
- **Mesa Del Sol's assumes that all activity is new activity and not relocation from other parts of NM.**
- **If 10 percent of the economic activity would have otherwise happened elsewhere in the state, the impact is negative.**
- **The City of Albuquerque approved the district in December 2006 and approved 67 percent of the tax increment rather than the maximum 75 percent.**

- **NM Board of Finance approved 75 percent in January 2007. Of the seven members of the board, three were absent and two abstained from the vote. The other two members voted for the resolution.**
- **New Mexico Finance Authority passed a resolution that the bond financing as presented by Mesa Del Sol was reasonable.**
- **NMFA has already provided loans to Advent Solar, located in Mesa del Sol, through its Smart Money program.**
- **UNM has a 15 percent participation percentage in the profits from the development.**
- **State Land Office may see land values appreciate.**
- **Bonds for infrastructure will likely be privately placed at first. Forest Covington, the parent company of Mesa del Sol, has purchased the bonds from other developments that use tax increment financing. NMFA has reported that there will be a three to six year call on the bonds to allow them to be competitively placed when the revenue stream is adequate.**
- **Companies at Mesa del Sol will also receive other credits, particularly investment tax credits, film production credits, and solar-related credits, which could significantly lower the revenue estimates presented by Mesa del Sol.**
- **TRD reports significant administrative burdens associated with identifying taxpayers within TIDDs.**

FISCAL IMPLICATIONS

The Taxation and Revenue Department (TRD) has scored HB1088 as an $8 million decrease in gross receipts tax revenue to the state. Under current fiscal impact procedures, dynamic analysis is not used for determining fiscal impact. Without counting the dynamic impacts discussed below, the fiscal impact would be the lost gross receipts taxes that are diverted to the TIDD.

Unfortunately, there is no precise way of knowing the fiscal impact because the TIDD is within Albuquerque and so is not broken out separately from the Albuquerque gross receipts data. In 2006, there was significant construction that generated gross receipts taxes to the state and local governments. Since the base year is 2005 under the TIDD law, 75 percent of GRT revenue beginning in FY08 will be distributed to the TIDD.

HBIC Amendment:
As NMFA reports below, it is unclear whether this the amendment prevents capital projects under their jurisdiction, most importantly the Smart Money program. They have already participated in two loans not to exceed $5 million to Advent Solar, which is located within Mesa del Sol.

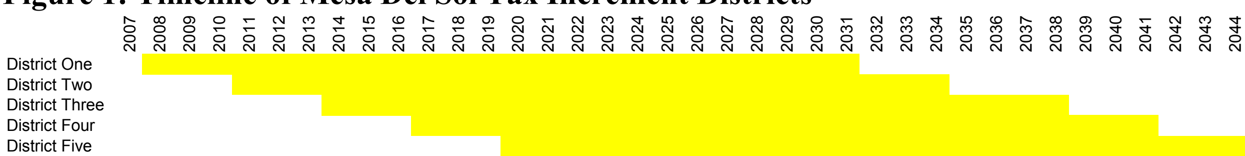
There is no appropriate method to determine the fiscal impact under the current fiscal impact report process. The revenues and costs associated with the Mesa del Sol project go out more than 25 years and in the beginning years, there is estimated to be a net gain to the state due to the construction projects. However, as people move into the development, demand for state government services will rise causing the fiscal impact to be negative.

If the development is successful, both the University of New Mexico and the State Land Office will gain. UNM, as part of their sale of the land to Mesa Del Sol, has a 15 percent interest in the profit Mesa del Sol realizes from the housing development. Likewise, SLO owns 9,000 acres around the Mesa del Sol TIDD which will appreciate in value as the development grows. Bernalillo County also owns a small portion of land adjacent to the TIDD where the Journal Pavilion is located.

How the TIDD will work. Since the TIDD was formed in 2006 by the City of Albuquerque, the base year for determining the increment will be tax year 2005, when there was virtually no taxable activity at the site. Mesa del Sol will receive a distribution equal to 75 percent of the "incremental" revenue from gross receipts within the TIDD or, since the base year had zero tax revenue, 75 percent of all of the revenue for over 25 years. The state will still receive income and property taxes and other fees and taxes.

Fiscal projections for the state. According to projections by Mesa del Sol, the fiscal impact is a positive $37 million over 25 years (Table one). The first years are positive due to high construction activity which generates significant gross receipts tax revenues. Later in the life of the project there is a net cost as the population increases. There are 5 TIDDs within Mesa del Sol, each with a 25 year time frame so the last bond will not mature until 2044. At that time, the distribution of tax revenue to Mesa del Sol will cease and return to the state and local governments. Figure 1 shows the timeline of each district, relating to a 25 year bond issue for each district.

Figure 1: Timeline of Mesa Del Sol Tax Increment Districts



The key assumption Mesa del Sol uses to project a net fiscal benefit is that all activity will be new activity to New Mexico. LFC analysis has shown that if as little as 7 percent of the activity is relocated from other parts of the state (or came to Mesa del Sol at the expense of other parts of the state), the fiscal impact begins to be a net cost to the state (table two). There are reasons to believe this is not unlikely. The first reason is that the state Economic Development Department touts the same projects—Advent Solar, Albuquerque Studios—as the Mesa del Sol developers suggesting coordination between the two groups. If Mesa del Sol is being promoted by the state economic development groups over other parts of the state, then projects that would result in increased revenue to the state end up increasing revenue within the TIDD.

The City of Albuquerque found that at 75 percent distribution Mesa del Sol did not meet their required "no net expense" criteria for development. As a result, the City lowered the share of distribution to 67 percent.

Table 1: Fiscal Impact as Projected by Mesa Del Sol

	2007-2011	2012-2016	2017-2021	2022-2026	2027-2031	Total (2007-2031)
Revenue to TIDD						
Property Taxes	**-**	**-**	**-**	**-**	**-**	**-**
75% of TIF-able GRT						
Retail	4,618,477	26,466,879	47,639,957	65,310,921	65,310,921	209,347,155
Other Business Activities	7,524,185	21,104,400	36,184,393	41,517,685	41,517,685	147,848,348
Utilities	7,853,415	18,702,916	30,401,505	34,439,606	34,439,606	125,837,048
Construction	22,376,831	23,750,854	22,148,586	-	-	68,276,271
Total TIF-able GRT	**42,372,908**	**90,025,049**	**136,374,441**	**141,268,212**	**141,268,212**	**551,308,822**
Estimated Revenue to TIDD	42,372,908	90,025,049	136,374,441	141,268,212	141,268,212	551,308,822
Revenue To State of NM						
Property Taxes	**177,425**	**1,371,637**	**2,844,301**	**3,973,837**	**4,025,217**	**12,392,417**
25% of TIF-able GRT						
Retail	1,539,492	8,822,293	15,879,986	21,770,307	21,770,307	69,782,385
Other Business Activities	2,508,062	7,034,800	12,061,464	13,839,228	13,839,228	49,282,782
Utilities	2,617,805	6,234,305	10,133,835	11,479,869	11,479,869	41,945,683
Construction	7,458,944	7,916,951	7,382,862	-	-	22,758,757
Total GRT	**14,124,303**	**30,008,349**	**45,458,147**	**47,089,404**	**47,089,404**	**183,769,607**
Personal Income Taxes	**15,437,840**	**38,327,741**	**63,226,379**	**67,307,905**	**66,524,271**	**250,824,136**
Estimated Revenue to State of NM	29,739,568	69,707,727	111,528,827	118,371,146	117,638,892	446,986,160
Cost to State of NM						
Public School Operating Cost	10,388,034	38,766,187	69,618,808	82,017,215	82,017,215	282,807,459
Higher Education Operating Cost	4,136,034	15,434,900	27,718,985	32,655,457	32,655,457	112,600,833
Hold Harmless City/County Payment	-	1,282,199	2,853,926	4,756,544	4,756,544	13,649,213
Total	**14,524,068**	**55,483,286**	**100,191,719**	**119,429,216**	**119,429,216**	**409,057,505**
MDS Calculated Benefit	15,215,500	14,224,441	11,337,108	(1,058,070)	(1,790,324)	37,928,655

Source: Mesa Del Sol

Table 2: Different Assumptions Regarding New Activity

	2007-2011	2012-2016	2017-2021	2022-2026	2027-2031	Total (2007-2031)
100% New	15,215,500	14,224,441	11,337,108	(1,058,070)	(1,790,324)	37,928,655
90% New	10,978,209	5,221,936	(2,300,336)	(15,184,891)	(15,917,145)	(17,202,227)
75% New	4,622,273	(8,281,821)	(22,756,502)	(36,375,123)	(37,107,377)	(99,898,551)

Source: LFC

SIGNIFICANT ISSUES

Mesa del Sol, a development south of the Albuquerque Sunport and part of the City of Albuquerque, has received approval from the city for the formation of a Tax Increment Development District (TIDD). As the TIDD is formed, they are now seeking the state's share of gross receipts tax revenue in the area.

The Mesa del Sol TIDD was formed by the City of Albuquerque in December, 2006. In January, 2007, the City agreed to distribute 67 percent of the incremental revenue generated within Mesa del Sol to the TIDD for infrastructure investments. The state Board of Finance (BOF) approved a 75 percent distribution of state gross receipts taxes generated within Mesa del Sol in January as well. Of the seven members, three were not present and two abstained. The remaining two members voted for the resolution.

NMFA reviewed the plan and the bond financing structure and submitted a resolution to the legislature on February 5, 2007. Bernalillo County has not acted on the proposal.

Mesa Del Sol Bonds. The provisions of this bill cap the amount of bonds that can be issued to $500 million which is $300 million more than Mesa del Sol projects needing from the state increment. Mesa del Sol plans $635 million in public infrastructure and projects that the incremental revenues granted by the City, County and State will fund $390 million. They estimate that the total bonding capacity of the incremental revenue is $561 million, leaving coverage of approximately 1.4x which is reasonable for a bond issue.

Mesa del Sol has reported that because the revenue stream is uncertain the bonds will likely be privately placed. Forest Covington, Mesa del Sol' parent company, according to SEC filings has purchased bonds issued by the Stapleton tax increment development. It will be incumbent on the board of directors of Mesa del Sol to ensure that some effort was made to find the best rate when the bonds are issued and to publicly issue the bonds when the revenue stream is sufficient to attract a competitive bid process. NMFA has raised this issue and they have reported that the bonds will initially be placed with Forest Covington but that there is a three year call which will allow the bonds to be more competitively placed.

NMFA:

> At the request of NMFA, the Mesa del Sol finance team incorporated specific bond structuring requirements into a revised Plan submitted to the State Board of Finance and approved as part of the State's dedication of 75% of State Gross Receipts Tax. Specifically, Section D of the Plan incorporates certain provisions related to bond structuring and protection of bondholders, the State and local taxing authorities. Among other provisions, the Plan outlines requirements of a minimum coverage ratio for each series of bonds as 1.25x maximum annual debt service, debt service reserves, trust indenture covenants concerning use of bond proceeds for public infrastructure, the collection and deposit of tax increment revenues, and investment rating/sophisticated investor requirements.
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> Additionally, the development plan clarifies the allowable uses of surplus tax increment revenues after payment of debt service and the funding of debt service reserves. The Plan now provides that dedicated tax increment revenues (excluding non-recurring gross receipts tax revenues generated by construction within the districts) that exceed the amount needed to pay debt service on district bonds and to fund debt service reserve accounts shall be accumulated, likely with the trustee under the bond indenture, on an annual basis. These excess tax increment revenues will be available annually, as needed, to satisfy the City's "No Net Expense" calculation should there be a shortfall. If the excess tax increment revenues are not needed for the "No Net Expense" calculation, as anticipated and forecast under the economic models, these revenues will be available to Mesa del Sol to secure short term bonds ("sponge" bonds), the proceeds of which will be used to construct public infrastructure within the districts, and/or to pay costs of operation and maintenance of the infrastructure built within the districts.
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> Mesa del Sol representatives presented NMFA with a draft finance plan that outlines the expected structure of the bonds. The initial series of bonds will be privately placed, uninsured, with Mesa del Sol's parent company and will have a 3-6 year call protection.

After revenues have stabilized, the bonds could then be sold to sophisticated investors in minimum $100,000 denominations.

Economic Development. Mesa del Sol has already attracted three facilities that promise to provide hundreds of jobs. Advent Solar, a solar power products manufacturer, has already begun to build their facility and expects to have 300 people working there. Albuquerque Studios, a film production facility, has broken ground and will provide studio space for films and commercials as well as ancillary retail. The National Nuclear Service Agency is planning to move off of Kirtland and set up on Mesa del Sol. They will have a secure access point to Kirtland and Mesa del Sol representatives expect them to anchor several defense related companies. All of these facilities will be paying property and gross receipts tax and only Advent Solar received an industrial revenue bond and only for an unexpected part of their facility.

The development plan includes an employment center of industrial and commercial tenants, "village" retail such as grocery stores and small retail operations, and a "regional retail" center along I-25 that would be made up of large retailers ("big box retail"). To the extent that the employment center attracts out of state investment that are export-based industries, the development should provide significant economic development. The large retailers, however, could supplant retail activity at other developments, such as the new Uptown Centre or one of the malls in Albuquerque. On the other hand, if 100,000 people move to New Mexico to live in Mesa del Sol, the additional retail options will be necessary.

According to Mesa del Sol, it has already invested over $40 million in the development. They have invested $11 million in land (which was mostly the purchase price from the University of New Mexico), $11 million in engineering and construction, $1.6 million for economic development and marketing, $5 million for Advent Solar's facility, and $13 million for predevelopment costs.

State Land Office:

There are approximately 20,000 acres of property adjacent to Mesa Del Sol held in the state land trust for its beneficiaries. By enhancing the infrastructure development of Mesa Del Sol utilizing TIF financing, the adjacent Trust property will be summarily enhanced.

When using the TIF method, it must be made clear that:

1) the bond proceeds can only be used for public infrastructure;
2) all infrastructure improvements are dedicated to the local government, in this case the city of Albuquerque;
3) all infrastructure improvements must be built to local government guidelines;
4) debt service on the bonds are paid from the increase in the established TIF district tax base and no new taxes are imposed.

Other issues. In addition to the TID financing proposal, Mesa del Sol tenants will be looking for other incentives. Mesa del Sol has reported that they are encouraging tenants not to apply for industrial revenue bonds (IRB) or other property or gross receipts tax incentives as those would run counter to the increment financing program.

The New Markets Tax Credit, a federal program, that will be routed through Finance NM!, a New Mexico Finance Authority subsidiary, is expected to benefit Albuquerque Studios in attracting investment. While this may be new out-of-state investment, it may also come at the expense of investments that would have been made in other parts of the state.

Also related to Albuquerque Studios is the film production tax credit which will be used by the production companies using Albuquerque Studios facilities. The revenue generated by Albuquerque Studios will mostly go to the TIDD whereas the tax on a film produced at the proposed Lionsgate studio in Rio Rancho will flow to the state, city and county.

Other major developments have also begun exploring establishing a TIDD. One, the Westland land owned now by SunCal, makes up most of the remaining developable land in Albuquerque. The two major tracts that can be developed on a grand scale are Mesa del Sol and Westland. If they form a TIDD as well, this could seriously affect the funding of services for the remaining part of the city since most if not all of any growth in revenues will take place in these two areas.

Another important issue is the use of other tax credits within TIDDs. Two of the major projects touted by Mesa del Sol are the film production facilities and the solar manufacturer. Both of these industries are already recipients of significant and expanding tax credits that are not necessarily tied to their tax liability. For example, a film that is produced at Mesa del Sol will pay gross receipts tax, most of which will be diverted to the TIDD. However, they will also apply for a 25 percent credit on taxable expenditures. In other words, the state pays the company a credit and misses out on most of the tax revenues. Investment tax credits will be the same since they are most useful against withholding by companies rather than the gross receipts taxes. **Key to Mesa del Sol's assumptions is the personal income tax revenue that the state is going to receive. To the extent that that revenue is rebated or refunded through various credits, the state could realize a net negative impact.**

ADMINISTRATIVE IMPLICATIONS

Taxation and Revenue Department (TRD):

> Administering the distribution of a portion of the state's GRT to the development will be difficult, time-consuming and expensive. The Department's Combined Revenue System ("CRS") will require major modifications to handle the collection and distribution of gross receipts tax increment revenue. As it is currently configured, the CRS system has no way to integrate the base revenue/increment revenue concept. As more cities implement districts, there will be a proliferation of location codes with their accompanying base/increment calculations. These will encumber the system, and could result in slower and less accurate distributions.
>
> The Department has no information that could be used to determine whether a business is located in a district. The only geographic information available to the Department is whether a business is located within municipal or county boundaries. This information would have to be generated with a new type of report. The new location information – along with a history of tax payments – would be needed to generate the base gross receipts tax estimate. This information will also be needed to determine how to distribute the tax increment amounts. Major revision to reports and to revenue processing and distribution systems will be required. No additional funds have been provided to the Department to address these administrative challenges.

BOF:

Actions taken by Mesa del Sol Tax Increment Development Districts 1 through 5 during the development process should remain consistent with the tax increment development plan, application and other information submitted to the State Board of Finance on January 16, 2007. If implementation of the plan would become materially different from the plan represented to the Board in the submitted documents, Board approval of such changes would likely become necessary. If Board approval of the changes is not obtained, the Board's approval for the dedication of the State gross receipts tax increment to secure the gross receipts tax increment bonds might cease to be effective.

If HB-1088 becomes effective, legislative approval of the issuance of the gross receipts tax increment bonds would remain subject to the New Mexico Finance Authority's determination that the bond proceeds will be used in accordance with the tax increment development plan approved by the City of Albuquerque and the New Mexico Finance Authority's review of the master indenture governing the use of the bond proceeds and any amendments to the master indenture. By resolution on January 18, 2007, the New Mexico Finance Authority determined that the proceeds of the bonds would be used upon the terms and with the protections described in the tax increment development plan approved by the City of Albuquerque. Pursuant to the same resolution, the New Mexico Finance Authority also required that a master indenture governing the bonds and any amendment to the master indenture modifying the use of the bonds be submitted to the New Mexico Finance Authority.

TECHNICAL ISSUES

The HBIC amendment intends to restrict capital outlay but the scope of the exceptions is fairly wide. Since the Mesa del Sol TIDD is a political subdivision in the eyes of the state, the amendment likely does not prevent any capital outlay projects for buildings and facilities [Section 5-15-9.C NMSA 1978]. It would prevent capital outlay from being used for roads, infrastructure, parks (except those that are part of a "cultural facility") and other amenities that the bonds will be used for. Mesa del Sol representatives have indicated that they are working with Albuquerque Public Schools on a master plan for education and presumably using the TIDD bonding mechanism for those investments. The University of New Mexico has a profit stake in the development and owns significant land adjacent to the development.

It also is unclear what capital projects are prohibited. NMFA makes a number of grants and loans that are authorized by the legislature but are not part of the traditional capital outlay process.

BOF:

Only 75 percent of the State share of the State gross receipts tax increment generated within the Mesa del Sol Tax Increment Development Districts can be used to secure the bonds subject to legislative approval in HB-1088. This might be more accurately reflected by adding "portion of the" after "a" on page 1, line 20.

On page 1, the bill states that the bonds issued are to be "secured by a gross receipts tax increment attributed to the imposition of the State gross receipts tax for the Mesa del Sol tax increment development project." According to Forest City Covington, the $500 million limitation should apply to the issuance of bonds secured by tax increments attributable to 75 percent of the State share of the gross receipts tax, as well as tax increments attributable to local gross receipts taxes and property taxes. Thus, on page 1, line 20, after "secured", the addition of "in part" might provide additional clarity.

In addition, "Mesa del Sol tax increment development project" is not defined, but likely refers to projects funded pursuant to the issuance of bonds by the established Mesa del Sol Tax Increment Development Districts 1 through 5. On line 18, after "bonds" it is suggested to insert "by Mesa del Sol tax increment development districts 1 through 5 in an amount" and to strike "for the Mesa del Sol tax increment development project" on lines 22 and 23.

NMFA:

NMFA received and thoroughly reviewed various documents submitted by Mesa del Sol, including:

- Application to the City of Albuquerque for the creation of the Tax Increment for Development District (October 2006);
- City of Albuquerque ordinance and resolutions:
  - i. Policy Formation Guidance Ordinance (November 2006);
  - ii. TIDD Formation Resolution (December 2006);
  - iii. Tax Dedication Resolution (January 2007);
- Application to the State Board of Finance for the use of State Gross Receipts Tax to back the issuance of Tax Increment Bonds (November 2006);
- Revised Tax Increment Development Plan (as submitted and approved by State Board of Finance at its January 16, 2007 Board Meeting);
- Draft Finance Plan; and
- Project update on construction projects within Mesa del Sol.

NMFA focused its review of the project to the structure of the proposed bond issuances as it relates both to the Tax Increment Development Plan and to assure that the proposed bonds will be structured to provide certain protections to the bondholders. In its review, the finance authority determined that it needed to review and approve the master indenture governing the proposed issuance of bonds, and any amendments to the master indenture, to be certain the bond proceeds would be used in accordance with the tax increment development plan. The finance authority's recommendation to the legislature is contingent upon this review and approval of the master indenture.

ALTERNATIVES

One alternative is for the state to finance the infrastructure necessary for the development. Using the state's credit rating, the costs would be significantly less than a private placement as will be required with the TIDD financing. It would be similar to the GRIP projects in scale, however. The incremental GRT could still be used to finance the bonds but there would be no distribution to the TIDD.

For credits that are not directly tied to liability such as the film production credit, legislation may be necessary to disallow these credits within TIDDs.

The scope of the prohibitions on capital outlay provide by the HBIC amendment could be narrowed and could be changed to include any TIDD and not just Mesa del Sol.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Mesa del Sol has reported on several occasions that this piece of the financing is crucial to their business plan. They are still the master developer for the SLO parcels and so some form of development will happen but that form may be significantly scaled back.

NF/nt