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

ORIGINAL DATE 02/03/09
SPONSOR Barela **LAST UPDATED** **HB** 392

SHORT TITLE Greenfield Tax Increment Districts Procedures **SB**

ANALYST White

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
$100.0		Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 451, HB 470, SB 19, SB 201, SB 249

SOURCES OF INFORMATION
LFC Files

Responses Received From
Department of Finance and Administration (DFA)
Economic Development Department (EDD)
New Mexico Finance Authority (NMFA)

Response Not Received From
Taxation and Revenue Departments (TRD)

SUMMARY

Synopsis of Bill

House Bill 392 proposes substantial changes to the Tax Increment for Development Act enacted by the Legislature in 2006. The proposed changes can be broken out into four parts:

1. **Increased State Oversight –** According to the present statutory language there is no state oversight once the districts have been given bonding authority by the Legislature. House Bill 392 would give the state that oversight by mandating that at least one member of TIDD governance boards be the Secretary of the Department of Finance and Administration (DFA) or designee. The bill also mandates that the Legislature "shall specifically authorize" the maximum amount of bonds which can be issued by the TIDD. This has been done in every piece of TIDD legislation that has yet come before the Legislature however it is not yet a statutory requirement. House Bill 392 additionally requires the state to retain adequate tax revenues equal to the estimated costs of services it must provide to the area within the district. Therefore the TIDD must generate sufficient incremental revenues as to meet the incremental costs incurred by the state.

2. **Increased Accountability –** House Bill 392 includes a variety of different increased accountability measures intended to protect the state. The legislation amends Section 24 of the existing statute:

    - requiring the TIDD board to account separately for any expenditures made with incremental revenues or TIDD bonds,
    - requiring the TIDD board to work with DFA and LFC to identify economic incentives being received by the TIDD,
    - and for the TIDD board to make an annual report of the aforementioned activities to DFA, LFC, and the CFO of the appropriate county, and or municipality by October 1st of each year.

    The bill would also decrease the amount of incremental tax revenue the State Board of Finance (BOF) may dedicate to a particular district from 75 percent for all districts to 50 percent for non-greenfield (brownfield or infill) TIDDs and 20 percent for greenfield TIDDs. Greenfield TIDDs would be allowed to earn the maximum 50 percent increment under certain circumstances outlined in the "Greenfield TIDD Procedures" section below. Additionally this legislation would require any revenues in excess of those needed for debt service and to make up a reasonable reserve, as determined by the TIDD board in consultation with the New Mexico Finance Authority (NMFA), to be reverted back to the taxing entity they would have normally been collected by.

3. **Greenfield TIDD Procedures –** This legislation defines a "greenfield" TIDD, as a district whose development plan involves a majority of undeveloped land, "is not currently served by municipal or county public infrastructure," and relies on new structures rather than the redevelopment of existing structures. House Bill 392 further develops new TIDD procedures for greenfield districts, particularly limiting them to only being able to receive a 20 percent increment from the state. The Bill states that greenfield TIDDs will only be eligible for the full 50 percent increment, described in the section above, if the following criteria are satisfied.

    - Dedication of land improved with infrastructure for public school facilities.
    - Development of a "transit-oriented development" that includes a park-once strategy integrating all modes of transit, and "if applicable…provides framework for a future mass transit system."
    - Designation of at least 20 percent of all dwelling units within the TIDD workforce housing. At least 15 percent of which must be designated "affordable" (defined as being affordable to households making 80 percent of the area median income), and 5 percent as mid-range (affordable to those making 80 to 130 percent of the area median income.

4. **Creation of a Tax Increment Financing Task Force –** Lastly, House Bill 392 appropriates $100,000 from the general fund to create the Tax Increment Financing Task Force comprised of:

    i. Secretary of DFA, or designee
    ii. Secretary of Taxation and Revenue (TRD), or designee
    iii. CEO of NMFA, or designee
    iv. Executive Director of the NM Association of Counties, or designee
    v. Executive Director of the NM Municipal League, or designee

- **vi.** An appointee of the Executive Director of the AFSCME Council 18
- **vii.** An appointee of the American Planning Association
- **viii.** An appointee of the LFC Chairman
- **ix.** An appointee of the Governor representing a neighborhood association within or adjacent to a TIDD
- **x.** An appointee of the NM Legislative Council representing a neighborhood association within or adjacent to a TIDD
- **xi.** An at large member appointed by the Governor
- **xii.** An at large member appointed by the NM Legislative Council

The task force is charged with evaluating the implementation and effect of the TIDD Act to date and the "consequences of the creation of additional greenfield" TIDDs. This task force is also charged with examining a variety of issues ranging from the long-term general fund fiscal impact, to the consequences if tax revenues prove insufficient to cover TIDD bond debt service. The task force shall present its legislative recommendations to the Governor and Legislature by June 1, 2010.

House Bill 392 carries an emergency clause, and therefore will go into effect immediately upon the Governor's signature.

FISCAL IMPLICATIONS

The appropriation of $100,000 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY10 shall revert to the general fund.

House Bill 392 would not affect any TIDDs currently in existence: Mesa del Sol, Westland DevCo (a.k.a. SunCal), Winrock/Quorum, and Downtown Las Cruces. Since the changes would apply to future applicants, there is no way to calculate a definitive fiscal impact. Reducing the maximum state increment allowable for dedication from 75 percent to 50 percent (or possibly 20 percent) should have a positive impact on general fund revenues. However, decreasing the maximum increment could discourage the future development of TIDDs in New Mexico. It is currently unknown what effect this would have on the state general fund.

SIGNIFICANT ISSUES

House Bill 392 is a response to the experience of the last three years since the Tax Increment for Development Act was enacted. Along the way there were many features of the legislation where there was no clear guidance and it became apparent to many participants and observers that the legislation could be improved. Particularly from the state's point of view there are very few oversight and accountability mechanisms to safeguard the state's investments. In one development for example, the state is financing upwards of 90 percent of local government infrastructure with no TIDD board representation.

Task force. The Tax Increment for Development Act was passed in the 2006 session and had not been considered by any interim committees before its passage. The statute was based on other laws such as the public improvement district act and the metropolitan redevelopment act but there was little in the way of public input into the design of the law. Now, there have been four TIDDs approved under the law (Mesa del Sol, Westland DevCo, Downtown Las Cruces, and

Winrock/Quorum) and many in the state feel there is reason to revisit the statute to see if there are ways to improve it. The task force is made up of a diverse group of interested parties though it does not seem to include a member of the developer community which would make it more inclusive. The task force is charged with evaluating:

- The long term fiscal impact on the general fund
- The long term fiscal impact on local government finances
- The amount of state and local GRT committed to TIDDs
- Other states' experience, particularly with using state level tax revenue
- Consequences of TIDDs not following the procurement code
- Economic development incentives in TIDDs
- Likely consequences if a TIDD fails
- Treatment of changes to the TIDD boundaries and board
- Other avenues for providing financing for public infrastructure for new developments.

State Notification. There is currently no uniform method for the notification of appropriate state entities that a county or municipality has passed a tax increment financing ordinance. At present, state agencies (Board of Finance (BOF), New Mexico Finance Authority (NMFA), Taxation and Revenue Department (TRD), and LFC) rely on word of mouth and the media to find out about municipalities and counties who are considering or who have passed TIDD legislation. In order to perform a thorough TIDD analysis state agencies need as much lead time as possible. Therefore it is imperative that appropriate state agencies be notified as soon as possible following any TIDD-related action by a local government or municipality.

State Oversight. After TIDDs receive approval from BOF and are authorized to issue bonds by the legislature, there is no longer any state oversight. The New Mexico Finance Authority (NMFA) is the only state entity involved with the TIDD process after legislative approval is received, as they are required to review master indentures prior to bond issuances. However, they are only required to review indentures. The statute is extremely vague as to what, if any, power NMFA may have to actually influence the content of such indentures. This legislation makes a crucial change to the current statute by requiring that at least one member of future TIDD governing boards be the Secretary of DFA or their designee.

Detailed annual reporting. House Bill 392 makes the reporting requirements of TIDD boards much stronger. Under current law, a TIDD board only has to separately account for all revenues and indebtedness based on gross receipts tax and property tax increments. House Bill 392 would require the TIDD board to account for all expenditures and the total value of state and local tax incentives in the district. The TIDD board would be required to submit an annual report to the LFC, DFA and the county and municipality in which the TIDD is located by October 1st of each year.

Allow BOF to ask applicant to pay for feasibility study. Currently, the governing entity to whom a developer is applying can ask that the developer finance an independent study to validate the application. BOF does not have this power and would need to finance a study on its own. DFA and LFC economists have been the principal reviewers of TIDD applications which require an enormous commitment of resources.

Revert excess revenues. This language clarifies what is to happen to excess revenues above and beyond those needed for debt service and an appropriate reserve. Under current law, there is no precise guidance as to what happens if the TIDD collects more revenues than needed. At the beginning of the TIDD, this will not be an issue since all of the revenue will be used for debt service on short term notes ("sponge" bonds) but as the build-out is completed and the long term bonds are in place, the TIDD may generate revenues above and beyond what is needed to service the debt. This is another important reason to have state representation on the TIDD board because if there is additional money available there may be an incentive to modify the master development agreement to allow for additional infrastructure not included in the original plan.

Although it is imperative that this issue be addressed, the language currently included in this legislation could have an adverse affect on districts, bonds issued on their behalf, and possibly the state. If incremental revenues were to slow for whatever reason the districts may not have enough reserves built up to make debt service payments in a timely manner. The language could also negatively impact the bonds' creditworthiness and force the districts to issue debt at a much higher interest rate, ultimately increasing debt service costs. This bill could also prevent districts from retiring bonds early.

New Mexico Finance Authority (NMFA):

> The new section of House Bill 392 that requires that all revenues in excess of that needed to service bonds and any reserves, as determined by the district board in consultation with NMFA, be returned to the taxing authority impairs the ability to retire bonds before their stated maturity. As the statute is currently written, all excess revenues must go to the repayment of bonds which will result in the bonds being paid off sooner. As part of its approval for the Winrock/Quorum TIDD, the New Mexico Finance Authority is requiring that bonds be issued with a "mandatory super sinker (fund)" which is anticipated to reduce the term of those bonds by approximately ten years. **This requirement is particularly important when a district does not intend on issuing its first series of bonds for several years, thereby accumulating revenues for a period greater than 25 years.**

By requiring future districts to implement a "mandatory super sinker" fund to house all revenues above and beyond those needed to support debt service costs, the districts may be able to use those excess revenues to pay off outstanding bonds before their designated maturity. LFC staff agrees that this method of handling excess revenues would be in the best interest of the state as it could significantly reduce the amount of time the districts receive incremental state revenues. **The bill however, does need language requiring any excess revenues accumulated above and beyond those needed for debt service to be reverted back to the appropriate taxing entity once all bonds are retired and the TIDD is no longer receiving incremental revenues.**

Greenfields. House Bill 392 would limit the amount of incremental state gross receipts tax (GRT) to 20 percent with additional amounts if the development satisfies certain conditions. A "greenfield" is essentially raw land where there has been no development before. The two largest TIDD developments in New Mexico so far have been greenfield developments rather than redevelopment projects. The concern is that it is much easier to develop greenfields, particularly those adjacent to developed areas, than existing areas and therefore should not require much in the way of subsidies. Infill areas, areas within service areas that may be blighted or have fallen into disuse, are typically less attractive to developers. However, it is for these areas that tax increment financing was first established in California in the 1950s. The intention of this legislation is to create additional hurdles to greenfield developments in order to create more assurance that the development will satisfy key state and local interests: affordable housing, transit oriented development, and investments in public school facilities.

ADMINISTRATIVE IMPLICATIONS

Depending upon the number of future TIDDs created within New Mexico, this legislation will require the Secretary of Finance and Administration to serve on a number of TIDD boards which may require additional in-state travel.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 392 is nearly identical to HB 451 except that HB 451 does not include any of the language concerning "greenfield" TIDDs, lowering the maximum allowable increment from 75 percent to 50 percent, or the creation of a TIDD task force.

HB 392 relates to SB 201 which clarifies technical issues raised by the Taxation and Revenue Department. It also addresses incremental revenues in excess of those needed to pay debt service in a manner similar to this legislation.

HB 392 also relates to HB 470, SB 249, and SB 19. HB 470 and SB 249 authorize the Westland DevCo (SunCal) TIDDs to issue bonds, and SB 19 authorizes the Downtown Las Cruces TIDD to issue bonds.

TECHNICAL ISSUES

Department of Finance and Administration (DFA):

> The appropriation is "to pay the costs associated with the tax increment financing task force." It is not clear if the "costs" are restricted to per diem and mileage for the public members or can include contracts with various consultants. Consider broadening the use of the funds to explicitly allow contract consulting services. A portion of the appropriation could be used to analyze the economic consequences of the existing TIDDs using a computable general equilibrium model of the state and regional economies.

Additionally NMFA recommends the removal of the new section pertaining to excess revenues on page 30, lines 10 through 16. Different language in reference to some type of "sinking fund" or escrow account could be inserted to address NMFA and LFC's concerns outlined in the significant issues section.

Language must be inserted into the bill to address procedures for returning excess revenues to appropriate taxing entities once all bonds are retired. If not money above and beyond that needed to pay off bonds will remain in limbo once bonds have been retired and the increment has expired.

ALTERNATIVES

The majority of the changes to the TIDD Act outlined in this legislation are absolutely necessary to ensure the protection of the state interests with future TIDDs. All of the changes which LFC staff feel are absolutely necessary are also contained within House Bill 451. The additional changes included in this bill which are not included in House Bill 451 are the various sections setting specific rules and procedures for "greenfield" TIDDs, lowering the maximum allowable state increment from 75 percent to 50 percent, and the creation of the Tax Increment Financing Task Force. A reasonable alternative to this legislation would be to enact House Bill 451 which includes only absolutely necessary technical changes to the TIDD Act.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Currently it is onerous to follow all of the local government actions to determine when and where the next TIDD will be considered. The likelihood of a TIDD application not getting a thorough review increases if it is unexpected. Without formal state oversight of the TIDD operations, the TIDD board may make changes to the development plan that are not in the best interests of the state. It is critical that the state be able to add its input when uses of bond proceeds are being approved by the TIDD board.

If this legislation were not enacted the maximum allowable TIDD dedication from BOF would remain at 75 percent, and "greenfield" TIDDs would continue to be treated the same as "brownfield" or infill TIDDs.

DMW/svb

Comparison Of TIDDs

	Mesa del Sol	Suncal	Downtown Las Cruces	Winrock/Quorum
Status	**Active**	**Active**	**Active**	**Active**
Receiving GRT Distribution	Yes	No	No	n.a.
Amount received YTD	$ 971,719.33	n.a	n.a	n.a
# of Districts	5	9	1	3
Governing Entity	City of Albuquerque	Bernalillo County	City of Las Cruces/Dona Ana County	City of Albuquerque/Bernalillo County
GRT	67%	31%	75% / 75% of first 1/8th	70% / 67%
Property Tax	67%	10%	75% / 75%	75% / 50%
Governing Board	3 City Council Council staff member City staff member	No governing board established	Consists of the City Council and one non-voting member selected by the county commisioners.	1 City Council Member, 1 County Commision Member, 1 State Member (Represenative Al Park), 1 City Staff Member, and 1 Developer. (There are 2 boards, one for the Quorum district and one for the Winrock Districts. All members are the same except for the developer representative.)
Board of Finance	Approved - 75% State GRT	Approved for 4 districts - 50% state GRT	Approved - 75% State GRT	TIDD 1 Approved - 57% State GRT, TIDD 2 Approved - 70% State GRT, TIDD 3 Approved 60% State GRT
Legislature	Bond Authority up to $500 million (HB1088 2007)	SB 249 and HB 470 seek up to $408 million	SCORC Substitute for SB 19 seeks up to $8.0 million	SB 467 seeks up to $164 million
Projected Cost	$ 635,000,000.00	$ 629,000,000.00	$ 12,000,000.00	$ 164,000,000.00
Employment				
Industrial	2,937	12,423	27	0
Commercial	5,231	6,743	449	3,054
Retail	3,756	1,045	538	1,898
Total New Employment	11,924	20,212	1,014	4,952
Capital Outlay Received	$26 million of capital outlay has been appropriated to finance infrastructure projects relating to various district entities including Schott Solar ($7.5 million), Fidelity Investments ($7.5 million), Equest ($9 million), UNM ($2 million).		The City has received approximately $4.5 million in capital outlay funds for downtown revitalizations. The City will be requesting a reauthorization of $1.9 million during the 2009 legislative session so that all of the capital outlay funds can be combined and utilized for construction of Main Street.	
Other Incentives	New Markets Tax Credit (Advent Solar, Albuq Studios) Smart money (Advent Solar) Film production tax credit Renewable Energy Production Tax Credit		The Unidev Corporation, which is currently the State's master planner for workforce housing, is planning on moving into the proposed TIDD has applied for $24 million in New Market Tax Credit and is expected to reapply.	
State participation	Master developer for surrounding SLO land UNM 15% participation in house sales			
Other participation	Bernalillo County facility adjacent UNM media center adjacent Journal Pavillion adjacent	Atrisco Land Grant (historical center) Double-eagle and Eclipse adjacent Cordero Mesa business park adjacent		