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

SPONSOR Papen | **ORIGINAL DATE** 1/27/09 | **LAST UPDATED** | **HB**

SHORT TITLE New Mexico Border Authority Powers & Expenditures | **SB** 55

ANALYST Lucero

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	$0.01	$0.01	Recurring	Border Authority Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to SB56
Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION
LFC Files

Responses Received From
Border Authority (BA)
New Mexico Finance Authority (NMFA)
Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

Senate Bill 55 seeks to amend Section 58-27-1 NMSA, the Border Development Act. This bill adds to the powers and duties of the New Mexico Border Authority allowing the department to expend funds or incur debt for the improvement, maintenance, repair or addition to property owned by the authority, the state, or the United States government.

Additionally, the bill deletes the prohibition of the authority to operate a project as a business or in any manner except as a lessor and expend funds or incur debt for the improvement, maintenance, repair, or addition to property not owned by the Authority.

FISCAL IMPLICATIONS

The New Mexico Border Authority currently has the power and duty of overseeing buildings and facilities that act as a port-of entry between New Mexico and Chihuahua, Mexico, manage applicable staffing and maintenance to such buildings and facilities, account and budget State and Federal allocations/appropriations to maintain and improve the existing border, as well as adhere to all provisions of the Border Development Act. As it stands, the Authority does not have authorization to operate a business, nor does it have bonding authorization. This bill would grant the Authority the right to issue debt, whether backed from lease revenues received or other, on its own or through the New Mexico Finance Authority.

SIGNIFICANT ISSUES

The Border Development Act currently allows the Border Authority to create ports-of-entry and related border development facilities and to transfer such real property and facilities to the federal government (NMSA 58-27-10 (b)(1-4)). The Act does not however allow the Border Authority to expend funds or incur debt for the improvement or expansion of ports-of-entry or related border development projects that are already owned by the federal government or other agencies of the state government (NMSA 58-27-10 (c)(3)).

The existing federal port facilities at Santa Teresa and Columbus now are in critical need of improvements and expansion.

According to the Border Authority, Federal policy now encourages joint projects with the states to improve or expand border crossings. In fact, joint federal-state projects are more likely to be funded by the federal government. The bill allows the Border Authority to participate in such joint projects, as well as in joint projects with other state agencies, primarily on New Mexico Department of Transportation rights-of-ways surrounding border crossings and at border commercial inspection facilities operated by the New Mexico Department of Safety. Joint state agency projects include, but are not limited to, parking, security, and ingress/egress to state and federal facilities.

The Border Development Act currently allows the Border Authority to act as an applicant for and operator of port of entry facilities (NMSA 58-27-10 (b)(3)) , but it also mandates that the Border Authority not operate a project as a business or in any manner except as lessor (NMSA 58-27-10 (c)(1)).

This bill eliminates the conflict, allowing the agency to operate port related businesses. The Border Authority acknowledges that it has multiple opportunities to provide business services that would expand border trade and traffic. Opportunities include, but are not limited to, providing parking for border crossers at existing state facilities, operation of the foreign trade zone at Santa Teresa, and leasing commercial office and dock space at existing state facilities.

PERFORMANCE IMPLICATIONS

The changes proposed by the legislation may enhance the ability of the Border Authority and better allow it to meet the intent of the Border Development Act.

ADMINISTRATIVE IMPLICATIONS

The Border Authority reports that it already administers and manages infrastructural projects. The proposed addition of joint federal and state projects would not significantly impact its administrative load. The assumption of new business operations would require expanded administrative capacity but such capacity could be funded by operational revenues.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The bill relates to SB56, Exempt Border Authority from Property Control, in that the Border Authority is now a tenant to Property Control at state facilities in Santa Teresa. The exemption of the Border Authority from the jurisdiction of Property Control would allow the Border Authority to directly manage and conduct the business activities allowed in this bill.

TECHNICAL ISSUES

According to the Attorney General, the Border Authority is created in the Border Development Act, the purpose of which is to generally develop port facilities at international ports of entry. NMSA Section 58-27-2. The Border Authority is a state agency administratively attached to the Economic Development Department. NMSA Section 58-27-4. It will therefore be subject to the prohibitions against making donations or lending its credit to private entities stated in the "anti-donation clause", Article IX, Section 14 of the New Mexico Constitution. That provision generally requires that the state receive consideration in return for providing funds to private enterprises. See Office of the State Engineer v. Lewis, 150 P.3d 375 (NM 2006) 2007-NMCA-008.

It is not clear whether the bill's amendments to NMSA Section 58-27-10 allow the Authority to expend funds on property owned by private enterprise or whether the amendments are intended to limit that authority to property owned by the state or the United States. It has been generally assumed that the United States Government does not fall within the anti-donation clause prohibition, as it is not a "person, association or public or private corporation" or "private enterprise".

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to the New Mexico Finance Authority, not enact this bill would prevent the Border Authority from potentially expanding economic opportunities, utilize lease revenues received, as well as issue bonds or incur debt that could improve the Authority's enforcement provisions stated in the Border Development Act.

The Border Authority reports that the state will not be able to jointly participate with the federal government in port improvement and expansion projects, thereby possibly delaying or eliminating such projects and may not be able to conduct business activities that could increase trade and traffic at New Mexico ports-of-entry, thus limiting possible economic development.

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