

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (www.nmlegis.gov). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/13
 SPONSOR Harper LAST UPDATED 03/12/13 HB 352/aHBIC
 SHORT TITLE Local Capital Outlay Project Contribution SB _____
 ANALYST Clark

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		
	See Fiscal Implications	See Fiscal Implications	Nonrecurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Economic Development Department (EDD)
 New Mexico Municipal League (NMML)

SUMMARY

Synopsis of HBIC Amendment

The House Business and Industry Committee amendment to House Bill 352 clarifies that the project participation agreement for an economic development project that uses public support provided by the state to a local or regional government shall include a recapture agreement for the state. The amendment also cleans up some language in the original bill.

Synopsis of Original Bill

House Bill 352 (HB 352) requires substantive contributions from qualifying entities receiving public support, requires security be given to all public bodies providing support, and requires local or regional governments to recover public support if the qualifying entity fails to provide the substantive contributions.

The Attorney General's Office (AGO) provides a detailed summary of the amendments to existing statute.

HB 352 would amend NMSA 1978, Section 5-10-10 of the Local Economic Development Act. Section 5-10-10 requires project participation agreements between

local and regional government bodies and qualifying entities receiving public support for economic development projects, and sets out minimum requirements for project participation agreements. The section currently mandates that the local or regional government obtain a “substantive contribution” from the qualifying entity. HB 352 would specify that any public support received by the qualifying entity is provided in exchange for such substantive contribution. The bill would also add a new subsection requiring that the qualifying entity provide security to the local or regional government body sufficient to secure the obligations of the qualifying entity under the terms of the agreement. The bill would further require that government body enforce the agreement against a qualifying entity that fails to perform its substantive contribution, and that the government body recover “that portion of the public support for which the qualifying entity failed to provide a substantive contribution.” The bill further provides that any such recovery be proportional to failed performance of the substantive contribution and take into account all previous substantive contributions based on the terms of the performance agreement.

FISCAL IMPLICATIONS

The fiscal impact of this bill is impossible to predict as it depends on the amount of public support provided to economic development projects, the specific terms of recovery of a portion or the entirety of said support, and the success or failure of the economic development projects involved. However, House Bill 2 as passed by the Senate contains \$3.3 million in LEDA funds for FY14, so the assumption could be made that if the money is provided entirely to projects that fail to perform the substantive contributions then the entire amount up to \$3.3 million could be recovered. This assumption could also be made for following years but again depends on the actual level of LEDA funding provided by the Legislature.

SIGNIFICANT ISSUES

State funds are often placed at risk in economic development projects, and currently no statutory requirement exists to require security for all public support or for recovery of the support if the project fails to meet its obligations. During the prior administration, LEDA funding was provided to Schott Solar in Albuquerque and Hewlett-Packard in Rio Rancho in the amounts of \$16 million and \$6 million, respectively. However, no language was placed in the contracts with these two companies for security of the state’s support or for recovery of the support if the companies failed to perform their substantive contributions. If the provisions of this bill had been in place prior to signing those contracts and providing the appropriations, some or all of the money could have been recovered in 2012 and 2013 when Schott Solar closed its operation and Hewlett-Packard laid off employees, both failing to reach their promised job goals. Without these provisions, the \$22 million of state funds is unrecoverable.

ADMINISTRATIVE IMPLICATIONS

There are no significant administrative implications. The Economic Development Department reports it has put these reforms into practice, requiring a substantive contribution and security for all state funds contributed to a local economic development project. The bill simply requires similar administrative reforms by statute.

TECHNICAL ISSUES

The AGO and the New Mexico Municipal League note that neither this bill nor existing statute clearly define “substantive contribution” by the qualifying entity. This is an important note because the vagueness of the existing definition would likely prove problematic if the local or regional government needed to take such an entity to court to recover the public support and relied on statute to determine what portion of the contribution had not been met. However, the vagueness of the definition allows flexibility for municipalities and counties to determine what benefits they wish to receive from an economic development project and what contribution by the qualifying entity would be appropriate for the community and for the specific project. A more specific definition in statute would severely curtail such flexibility.

However, municipalities and counties must be mindful that because statute does not specifically enumerate what constitutes a “substantive contribution,” the contracts signed with the qualifying entities should specify: 1) the contribution, 2) what levels of contribution must be reached to determine the entity has fulfilled its obligations, and 3) what portions of public support shall be recovered for different levels of obligation fulfillment less than 100 percent.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Additional state funds may be placed at risk without legislation such as this requiring security for public support and requiring local and regional governments to recover the support if the qualifying entity fails to perform its substantive contribution.

JC/bm:svb