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

SPONSOR Coll **DATE TYPED** 2/9/04 **HB** 575

SHORT TITLE Make NMFA a State Agency **SB**

ANALYST Gilbert

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
			$3,024.0	Recurring	General Fund
			$429,738.8	Non-Rec	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with: HB 100, HB 123, HB 124, HB 125, HB 200, HB 249, HB 358, HB 355, SB 110, SB 150, SB 194, SB 201, SB 202 SB 248, and SB 260

SOURCES OF INFORMATION
LFC Files

Response Received From
New Mexico Finance Authority (NMFA)
The Modrall Sperling Law Firm
Sutin, Thayer & Browne Law Firm

SUMMARY

Synopsis of Bill

House Bill 575 amends the Finance Authority Act, §6-21-2 NMSA 1978 (being Laws 1992, Chapter 61, Section 2), to change the legal status of the New Mexico Finance Authority (NMFA) from a governmental instrumentality to a state agency and transfers all funds held by the NMFA to the state treasury.

Significant Issues

As a governmental instrumentality, the NMFA has the flexibility to achieve the purposes set forth under the Finance Authority Act. As such, its actions do not directly implicate the state, its credit or the general fund.

The NMFA public project revolving fund (PPRF) bonds are issued under the NMFA's credit as special revenue fund bonds payable from and guaranteed by NMFA assets.

If the NMFA is converted to a state agency, the credit of the state and the general fund will potentially become aligned with NMFA debt, thus converting NMFA bonds into unconstitutional debt and undermining the tax-exempt status of PPRF bonds.

Currently the NMFA holds it funds separately from all other state funds, has its own bond issuance authority, and is expressly independent from control by other state agencies. If the NMFA becomes a state agency, past bond issues may become constitutionally susceptible to attack and the NMFA may be precluded from future statutorily authorized projects, such acquisition of the PERA building.

FISCAL IMPLICATIONS

HB 575 recreates all NMFA programs within the State Treasurer's Office. This transfer of programs would shift the cost of operations to the general fund. The NMFA states that the general fund fiscal impact for FY 05 would be approximately $3,024.0 and NMFA operations would require recurring appropriations in future years.

Also due to the constitutional and non-impairment issues, all of the NMFA outstanding bonds would most likely be defeased. The FY 05 fiscal impact would be a one-time appropriation of $429,738.8 from the general fund to finance a defeasance escrow for the outstanding principal balance of all NMFA bonds.

Litigation costs arising from passage from HB 575 could also be significant.

ADMINISTRATIVE IMPLICATIONS

Currently, the NMFA handles all financial administration related to NMFA programs. HB 575 would move the administrative function to the Department of Finance and Administration (DFA). HB 575 would require re-classification of NMFA employees as state employees impacting PERA and the established benefit programs already functional and operational for NMFA employees.

The NMFA believes it can more effectively operate and achieve the purposes stated in the NMFA Act if it is clearly separated from the state's credit and the state general fund.

According to the Sutin, Thayer & Browne law firm, "the changes proposed by HB 575 could have unexpected and potentially serious consequences in terms of the market's acceptance of the NMFA bonds, both outstanding and future."

TECHNICAL ISSUES

According to the Modrall, Perling law firm, HB 575 clearly violates the non-impairment clause of the New Mexico Constitution, Article II, Section 19, and the non-impairment provisions of the NMFA Act. The NMFA currently has contractual relationships with its bond holders that would be impacted if the bonds were subsequently found unconstitutional upon implementation of HB 575.

The New Mexico Constitution expressly forbids the Legislature from taking action that impairs existing contractual relationships. Therefore, holders of outstanding bonds issued by the NMFA during the past twelve years may file suit to prevent HB 575 from taking effect.

OTHER SUBSTANTIVE ISSUES

The NMFA's status as a separate instrumentality was the key feature in allowing the State Office Building Bonds in 2001 and the State Museum Building Bonds in 2003 to be issued. Those outstanding bonds may also become unconstitutional under HB 575 under the principles set forth by the New Mexico Supreme Court in the Trujillo case in the 1940's and subsequent cases by implicating the State's credit. No additional bonds could be issued under that program, including bonds already approved by the State Legislature for acquisition of the PERA Building.

According to the NMFA, HB 575 would violate the non-impairment pledges made in NMFA bonds and result in drastic municipal bond market consequences for the NMFA, the state and all political subdivisions that participate in the municipal bond market. Municipal bond insurers and rating agencies may withdraw from the New Mexico market and reduce ratings on New Mexico bonds because the non-impairment language found in bond statutes will be deemed unreliable and not trustworthy.

The NMFA also feels HB 575 would impair the GRIP transportation financing program approved by the Legislature during the 2003 special session. As a separate instrumentality with established bond market credentials and a team of qualified finance professionals, the NMFA is able to access the bond capital markets at the lowest attainable interest costs. Those capabilities would be lost under HB 575.

RLG/njw