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 (legis.state.nm.us). 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.

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

SPONSOR Sanchez **DATE TYPED** 2/19/05 **HB**

SHORT TITLE Amend Development Fees Act **SB** 1005/aSPAC

ANALYST Hadwiger

APPROPRIATION

(in $000s)

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates HB805/aHJC.
Relates to SB1017.

SOURCES OF INFORMATION
LFC Files

Responses Received From
Department of Finance and Administration (DFA)
No comments were received from the New Mexico Municipal Association or Association of Counties at the time this F.I.R. was prepared.

SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs Committee Amendment to SB1005 deletes a paragraph in the original bill that stated: "A municipality or county may not use impact fees or the authority of the Development Fees Act as a growth management tool or as a penalty or incentive for development in any particular area within its jurisdiction." It would replace this text with a new paragraph that states: "A municipality or county may use impact fees for the sole purpose to offset the impact of growth or development within its jurisdiction." The amendment would also indicate that the sole use of marginal or incremental cost calculations for impact fees would not be permitted.

Synopsis of Original Bill

Senate Bill 1005 would make three changes in statute with regard to the use of impact fees:

1. Prohibits municipalities or counties from using impact fees as a growth management tool

or as a penalty or incentive for development in a particular area within its jurisdiction.

2. Prohibits use of marginal or incremental cost calculations for impact fees and mandates, instead, that impact fees reflect the average cost to pay for a proportionate share of the cost of system improvements.
3. Requires that municipalities and counties credit against impact fees improvements built by a developer that were not listed on the municipalities' capital improvement plan.

Significant Issues

SB1005 appears to be primarily intended to overturn an impact fee ordinance adopted by the City of Albuquerque in November 2004, although it may affect impact fee ordinances in Santa Fe, Los Lunas and elsewhere. During the deliberations over the Albuquerque ordinance, representatives of the National Association of Industrial and Office Properties (NAIOP) and Home Builders Association expressed the following concerns about the impact fees:

- The impact fees would drive development outside city boundaries.
- Impact fees in parts of the west side of Albuquerque would be high (about $9,000 to build a new 2,000-square-foot house) compared to the central city (about $1,500 for the same house).
- High impact fees on the west side could make it difficult for young families to find affordable housing. Ultimately, the effect of impact fees on homeowners would be multiplied as they would pay the impact fees over 30 years in their mortgages.
- The impact fees were being used for social engineering, to push development into certain parts of the city and away from other parts.

Proponents of the Albuquerque ordinance expressed the following reasons for their support:

- The fees would reflect the actual cost of infrastructure to support new development. The fees would be relatively low in areas where roads and other infrastructure are in place and higher on the less-developed fringes of the city.
- A system using "average fees" would result in subsidy of fringe development by infill development.
- Impact fees are generally preferable to use of tax revenues to pay for new development, because the beneficiaries bear a greater portion of the share of infrastructure costs.
- The ordinance was amended to provide reductions for projects that would generate new jobs (70 percent for industrial projects, 50 percent for office projects, etc.).

The Department of Finance and Administration provided the following comments on SB1005:

> Studies show that housing prices do not increase when impact fees are placed on the buyer of raw land, because the value of infrastructure is factored into the purchase price. Impact fees become part of the cost of doing business, incorporated into the sales prices of residential and commercial structures. They are amortized in mortgages over decades, and any needed infrastructure is not deferred or ultimately paid for by taxpayers.
>
> How a community is fiscally affected is often contingent on the location and type of growth.

An Urban Land Institute study found that traditional towns, when compared to low intensity development, cost one third to one half as much for services and infrastructure. Streets, utilities, and schools for a suburban single family development with three dwelling units per acre built five miles from sewage and water treatment plants in a leapfrog pattern cost $43,381 per dwelling in 1987 dollars. Building the same development adjacent to existing development and near central facilities reduces costs by $11,597 per dwelling unit, a 27 percent reduction.

28 states have enacted development fee enabling legislation. New Mexico's 1993 law, based on Texas' law, is one of the most prescriptive in the nation. Many local governments who have considered adopting impact fees consider the law too burdensome, resulting in a handful of local governments in New Mexico – including Santa Fe City and County, Bernalillo County, Los Lunas, Rio Rancho, Las Cruces, and now Albuquerque – taking the necessary steps to impose impact fees.

Based on what Albuquerque plans to spend on roads, parks, police and fire protection over the next eight years to support development on its West side, data from Albuquerque's impact fee consultants show that infrastructure costs not paid by developers on the West side exceeds $14,000 per house. That is in addition to what the developers currently pay through such methods as exactions, but it excludes cost of other facilities such as water and sewer lines, which can be assessed under the Development Fees Act, as well as schools, libraries and community centers, which cannot.

SB1005 prohibits setting impact fees on a marginal cost basis, instead, it requires the use of average cost. Albuquerque spent two years devising its impact fee schedule; as approved by the City Council, fees for a 2000 square foot home would range from $1,332 to roughly $8,500. City of Santa Fe's impact fees, based on one service area rate, vary from $2,000 for a 1500 square foot home to $5,000 for a 4500 square foot home. Los Lunas' fees range from $3,227 per household to $36,500 for industry. Mandating the setting of impact fees on an average cost basis not only affects these three cities, it effectively mandates subsidies of developments whose costs exceed city or county averages, which could be construed as violating the anti donation clause.

Officials with the City of Albuquerque indicated concern that the required credit against impact fees for any improvement, regardless of whether it is on the city's capital improvement plan, could result in fee credits for low-priority improvements or improvements that are of questionable public benefit.

The SPAC amendment to the bill appears to retain the intent of the original language, particularly by specifying the "sole purpose" for which impact fees can be used. Although any language on this topic is likely to face extensive litigation, the amended language may be subject to greater degree of interpretation.

FISCAL IMPLICATIONS

DFA indicated that this bill might cause cities and counties to turn to the state to pay a greater share of infrastructure costs for new developments.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates HB805.
Relates to SB1017.

OTHER SUBSTANTIVE ISSUES

Impact fees are payments required by local governments and paid by residential, commercial and other developers to provide new or expanded public capital facilities required to serve that development. The fees typically require cash payments in advance of the completion of development, are based on a methodology and calculation derived from the cost of the facility and the nature and size of the development, and are used to finance improvements offsite of, but to the benefit of the development. In New Mexico statute (Section 5-8-2 NMSA 1978), impact fee is defined as "a charge or assessment imposed by a municipality or county on new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development." The statute details applicability of this definition.

The National Association of Industrial and Office Properties identifies the following advantages and disadvantages of impact fees:

Potential Benefits of [impact fees] From General Public Point of View are:

- *It requires the persons who benefit from specific new developments to pay more—but not necessarily all—of the full costs associated with those developments than if the required infrastructure were separately financed.*
- *From the viewpoint of persons who are opposed to growth, [use of impact fees] has the advantage that it reduces the growth prospects of the localities that adopt it, as noted in the next point.*
- *From the viewpoint of owners of existing properties in a locality, [use of impact fees]has the advantage that it raises the market prices of their properties by raising the costs of creating new and competitive properties in the same locality. This creates a windfall gain for those owners.*

Potential Drawbacks of [impact fees] from General Public Point of View are:

- *It reduces the economic feasibility of all projects to which it is applied. It also increases the costs of occupancy for tenants, thereby reducing the competitiveness of locations within the communities that adopt this technique.*
- *It makes it more difficult for marginal firms to occupy space, or low-and-moderate income households to reside, in the communities that adopt it*
- *It usually creates a regressive redistribution of wealth in the regions where it is adopted. That is, it makes it harder for low- and moderate-income households in those regions to enter the communities that adopt it, and raises the costs of living to renters within those communities. At the same time, it increases the wealth of all property owners in those communities. Since the first two groups are generally less well off economically than the third group, this technique essentially redistributes resources from relatively less affluent groups to a relatively more affluent one.*

DH/sb:lg