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FISCAL IMPACT REPORT

ORIGINAL DATE 1/31/2006
 LAST UPDATED 2/8/2006 HB 639/aHTC/aHAFC

SPONSOR Wirth

SHORT TITLE Dept. Of Transportation Land Development SB _____

ANALYST Moser

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	None		
	See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

NM Department of Transportation (NMDOT)
 General Services Department (GSD)
 Legislative Council Services (LCS)

SUMMARY

Synopsis of HAFC amendment

The House Appropriations Finance Committee amendments to House Bill 639 ensure that the use of eminent domain to acquire land to be developed or operated by a private entity will not occur.

Synopsis of HTC amendment

The House Transportation Committee amendment makes technical changes by changing the term “transit oriented development” to “project.” An additional technical change was made regarding compliance with the appropriate jurisdiction’s laws, rules or policies. The original bill had only specified the county. The amendment includes the city of Santa Fe.

Synopsis of original Bill

An act relating to land use by the department of transportation; providing authority and conditions for disposition and development of department land in certain situations; making an appro-

priation; declaring an emergency. The bill authorizes the continued development by the department of department-owned real estate located at its general office headquarters at 1120 Cerrillos Road, Santa Fe, New Mexico (the site) and imposes conditions upon the department (see significant issues) and the bill authorizes the continued development by the department of department-owned real estate located at its District 5 location, 7315 Cerrillos Road, Santa Fe, New Mexico

The bill amends the powers and duties of the state transportation commission and department in Section 67-3-12 NMSA 1978 by clarifying the authority provided by last session's HB 152 to the department to authorize commercial enterprises or activities on department, or commission, owned property, not including controlled-access facilities, and imposing restrictions on this authority.

The DOT will make its selection of developers for its property based on a competitive process, that while DOT and all state property is not subject to local control, the DOT will seek recommendations and comments from the City and County of Santa Fe on its development proposals and will negotiate with the city and county for services, such as water. All transactions involving land must be conducted for appraised fair market value. All money received by the DOT from the use of its land for commercial enterprises will be deposited into the state road fund, available then for appropriation by the legislature. For these two projects, once developers are selected and the projects begun, the DOT will report the status of the projects on a monthly basis to the legislature.

FISCAL IMPLICATIONS

The Bill's title indicates that an appropriation is being made. However, no actual public funds will be appropriated as a result of the passage of this Bill. The Bill contemplates authorizing the department to use the in-lieu value of the use of department-owned land to fund new department facilities and improvements without using public funds otherwise available for appropriation to fund other public projects.

General Office: The department facilities constructed by the developer will cost no more than \$90,000,000. In lieu of lease payments by the developer to the department, the cost of the department facilities and related financing costs to the department will be paid for by the developer during the initial term of the lease. Lease payments received by the department from the developer during renewal or extension of the initial term of the lease shall be deposited into the state road fund.

District 5: The department must require a financing plan from the developer, which must state the fair market value of the existing district 5 site and explain that the consideration for the new district 5 site is the value of the use of the existing district 5 site to the developer, capitalized over time. The bill stipulates that the market value of the existing district 5 site must be less than, or equal to, the market value of the new district 5 site. If the use by the developer of the existing district 5 site is governed by a lease, then, in lieu of lease payments by the developer to the department, the cost of the department facilities and related financing costs to the department will be paid for by the developer during the initial term of the lease. Any such lease payments received by the department from the developer during renewal or extension of the initial term of the lease shall be deposited into the state road fund.

SIGNIFICANT ISSUES

Last session the legislature passed a bill authorizing the DOT to conduct or permit commercial activities on DOT land along major highways, except for interstates. However, the language granting the authority was broader than realized and did not include the kind of considerations and limitations that the legislature customarily put on similar kinds of authority for commercial activities on state property.

This bill represents a cooperative effort with DOT to set in place provisions in the law for legislative oversight that will assist the DOT in planning and developing commercial projects that will serve the traveling public and also provide money that the legislature can appropriate to DOT to use in the future to fulfill its statutory duties to provide an efficient and safe transportation system in New Mexico.

General Office Complex

The NMDOT indicates that the project contemplates leasing a portion of the site to a developer, who would then finance, design, develop and construct a transit oriented development on the leased property.

- This bill provides that in exchange for lease payments during the initial term of the lease the developer will, at no cost to the department, finance, design, develop and construct new office headquarters, including parking and related facilities and a multi-modal facility to accommodate train, bus and other forms of transportation, for use by the department.

The transit oriented development portion of the project is required to be generally compatible with the City of Santa Fe's (the City's) zoning and land use policies, including affordable housing and architectural standards, if any.

- To this end, the developer is required to submit its plans to the City for comment. The City has 30 days within which to issue recommendations and comments to the developer regarding the general compatibility of the plans with the City's zoning and land use policies.
- Neither the department nor the developer, however, is required to obtain the City's approval or submit to the City's development and construction review process.
- Additionally, to the extent the transit oriented development obtains water or other services from the City, the terms and conditions for such services will be determined pursuant to negotiated agreement between the City and the department, provided that such terms and conditions will not be more stringent than City laws in place on the effective date of the bill.
- The bill does not delegate any authority to the City to enforce any of its laws on the department or developer.

The department facilities constructed by the developer will cost no more than \$90,000,000.

- In lieu of lease payments by the developer to the department, the cost of the department facilities and related financing costs to the department will be paid for by the developer during the initial term of the lease.
- Lease payments received by the department from the developer during renewal or extension of the initial term of the lease shall be deposited into the state road fund.

The department is required to report the selection of the developer to the legislative finance committee and must provide monthly status reports to the committee until the project is complete.

District 5 Site:

The project contemplates choosing a developer to finance, design, develop and construct a commercial or mixed-use development at the existing district 5 site.

- In exchange, the value of such development would be used to fund, at no cost to the department, the design, development and construction of a new district 5 site by the developer, for use by the department, on real estate to be obtained by the developer within 10 miles of the City of Santa Fe.
- The entire project is required to be generally compatible with the County of Santa Fe's (the County's) zoning and land use policies, if any. To this end, the developer is required to submit its plans to the County for comment. The County has 30 days within which to issue recommendations and comments to the developer regarding the general compatibility of the plans with the County's zoning and land use policies. Neither the department nor the developer, however, are required to obtain the County's approval or submit to the County's development and construction review process. Additionally, to the extent the transit oriented development obtains water or other services from the County, the terms and conditions for such services will be determined pursuant to negotiated agreement between the County and the department, provided that such terms and conditions will not be more stringent than County laws in place on the effective date of the bill. The bill does not delegate any authority to the County to enforce any of its laws on the department or developer.
- The department is required to report the selection of the developer and the project financing plan to the legislative finance committee and must provide monthly status reports to the committee until the project is complete.

The bill also amends the powers and duties of the state transportation commission and department in Section 67-3-12 NMSA 1978 by clarifying the authority provided by last session's HB 152 to the department to authorize commercial enterprises or activities on department, or commission, owned property, not including controlled-access facilities, and imposing restrictions on this authority as follows:

- The department may authorize commercial enterprises or activities on its property, in its discretion, by lease, which proceeds shall be deposited into the state road fund, or, with legislative approval, by in-lieu value consideration through the sale, exchange or lease of department, or commission, owned land.
- The department must adopt a rule implementing procedures to involve local residents in the department's planning and decision-making process prior to initiating commercial enterprises or activities on department, or commission, owned land. Additionally, the department must require private entities, with whom the department initiates commercial enterprises or activities on department, or commission, owned land, to create its plans for

the commercial enterprise or activity to be generally compatible with local zoning and land use policies, if any. These restrictions are substantially similar to the intergovernmental relation requirements described above.

TECHNICAL ISSUES

The NMDOT points out the following technical concerns: first, in the portion of the GOTOD project section that concerns local government participation, Section 1(C), the term "transit oriented development" is used rather than the term "project." (The same portion of the District 5 project, Section 2(C), uses the term "project.") This is important because the project contains both the transit oriented development (TOD) and the department's new general office (GO). If the language is not changed to the project it could interject confusion that the TOD portion is protected from city authority but the GO portion is not similarly protected or that the TOD portion has to be compatible with city policies but the GO portion does not.

Second, in the same portion of the District 5 project, Section 2(C), the sentence that discusses what happens if the project uses county water or other services should be amended to include reference to the City, since if water is not transferred to DOT property and is instead supplied, the supplier may be the City, not the County. This also means that a definition for the City of Santa Fe will need to be included in the definition section of the bill.

EM/yr:mt:yr