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FISCAL IMPACT REPORT

ORIGINAL DATE 2/12/07
 SPONSOR HTRC LAST UPDATED 3/16/07 HB CS/606/aHAFC
 SHORT TITLE Arts & Cultural Districts Act SB _____
 ANALYST Wilson

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY08	FY09	Full Year		
NFI	(\$25.0)	(\$85.0)	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$100.0	\$100.0	\$200.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Cultural Affairs (DCA)
 Economic Development Department (EDD)
 Taxation & Revenue (TRD)

SUMMARY

Synopsis of HAFC Amendment

The House Appropriation & Finance Committee amendment to the House Taxation & Revenue Committee substitute for House Bill 606 removed the \$100,000 appropriation.

Synopsis of Original Bill

The House Taxation & Revenue Committee substitute for House Bill 606 appropriates \$100,000 from the general fund to the arts and cultural district fund for expenditure in fiscal year 2008 and

subsequent fiscal years to carry out the purposes of the fund

This bill enacts the Arts and Cultural District Act, creating an Arts and Cultural Commission administratively attached to the DCA and responsible for developing policies, standards and a program to designate no more than five arts and cultural districts annually in New Mexico. The bill carries an appropriation of \$100,000 from the general fund to the DCA in order to carry out the purposes of the Act.

In addition, the bill charges the EDD under the Local Economic Development Act to provide support and technical assistance to the arts and cultural districts and publicly owned cultural facilities.

The bill includes amendments to Section 7-2-18.2 NMSA 1978 and Section 7-2A-8.6 NMSA 1978 which will increase the project cap from \$25,000 to \$50,000 for qualifying projects in newly designated Arts and Cultural Districts.

The provisions of the Act will apply to taxable years beginning on or after January 1, 2007. The provisions are applicable to tax years beginning on or after January 1, 2009.

FISCAL IMPLICATIONS

The appropriation of \$100,000 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

Present law provides for individual and corporate income tax credits for the preservation of cultural property will be amended to allow an additional credit for 50 % of the cost of restoration or rehabilitation of cultural property that is located within an arts and cultural district. The additional credit will be limited to a maximum of \$50,000, including any other credit claimed for preservation expenses on the same property. Taxpayer's could claim a credit for each year in which preservation is carried out, up to a maximum of three years. As under present law, the credits could be deducted from liability, and any excess could be carried forward for up to four years.

An average of approximately \$280,000 in cultural property tax credits have been claimed annually during the past three years against personal and corporate income tax obligations. They are typically claimed on about 100 returns, for an average of \$2,800 per return. The estimate above assumes this figure will increase by 30 percent due to the proposed legislation. Impacts are likely to have a limited effect in the near term because a relatively small number of districts will be established.

SIGNIFICANT ISSUES

DCA states that a newly-created Arts and Cultural Commission is unnecessary. The DCA currently has two existing, statutorily created commissions that work collaboratively on related

arts and cultural activities. With the power and duties outlined in the proposed Arts and Cultural Districts Act, along with the appropriation included in this bill, these two commissions – the Cultural Properties Review Committee and the New Mexico Arts Commission – could administratively carry out the responsibilities envisioned in the legislation.

The Cultural Properties Act of 1978 created the Cultural Properties Review Committee (CPRC) as the policy making advisory body to the HPD on matters of cultural history and preservation. Members of the CPRC are appointed by the Governor based on their knowledge of New Mexico’s cultural heritage. Each member possesses specialized knowledge of New Mexico in the disciplines of architecture, archaeology and history. The State Historian serves by statute and is independent of gubernatorial appointment. Under the Act, the CPRC prepares and keeps up to date the official register, composed of properties identified by the CPRC as having historical or other cultural significance and integrity, being suitable for preservation and having educational significance. Properties must be listed on the register to be eligible for the Income Tax Credit, which the CPRC also approves by statute.

The New Mexico Arts Commission was created by statute in 1965 and acts as the advisory body for New Mexico Arts, the state arts agency and a division of the Department of Cultural Affairs. The 15 member commission is appointed by the Governor, who also appoints the chairman of the commission. Members, by statute, are broadly representative of all fields of the creative and interpretative arts, and are widely known for their professional competence and experience. Arts Commission members moderate the peer panel reviews for each granting category under New Mexico Arts granting program for nonprofit arts organizations and folk arts apprenticeships. A Planning and Budget Subcommittee of the Arts Commission, named by the chairman, makes funding recommendations based upon grants applicants scores and available funding each year. The full Arts Commission acts on the grants recommendations at its spring quarterly meeting. Arts Commissioners also advise the Arts Division on a range of other projects, including the annual Governor’s Awards for Excellence in the Arts, Arts Trails, Art in Public Places Program, American Masterpieces and Poetry Out Loud.

In addition to these two existing commissions within DCA, an interagency group – comprised of representatives from DCA, EDD, Tourism Department (TD) and the State Department of Transportation – is cooperating on Main Street initiatives, one of which can be the development of arts and cultural districts. Expanding the role of the EDD in support and technical assistance under the Local Economic Development Act will be key to accomplishing economic and marketing success. This interagency group recommended the establishment of a “State Arts and Culture Committee” that will be made up of a representative from each of the existing DCA, EDD, TD, and three Governor appointees – one from the arts and culture industry, one from the hospitality industry and one from a local Main Street program group. The proposed creation of an Arts and Cultural Commission in this bill appears to be in conflict with this interagency plan for a representative committee.

PERFORMANCE IMPLICATIONS

The Cultural Properties Act of 1978 outlined the responsibilities of the HPC, including the preservation of cultural properties which contribute to the economic development, quality of life and rich cultural heritage of the State of New Mexico and its communities through increased economic activity, community pride, tourism and increase in gross receipts taxes. Projects in newly designated arts and cultural districts that expect to see benefit of the raised historic tax

credit cap will still need to comply with existing program requirements for the HPD historic tax credit program.

ADMINISTRATIVE IMPLICATIONS

Support staff for the proposed Arts and Cultural Commission staff will be provided by the DCA. The DCA will have some increased costs associated with staff administration and travel and Commission members' per diem and mileage.

It is assumed that the EDD will also experience some fiscal impact as staff provides technical assistance in developing economic development plans or projects in the arts and cultural districts.

TRD states there will be a small on them. Income tax forms, instructions and processing programs will be changed, which can be handled during annual revisions.

TECHNICAL ISSUES

The bill's title does not reference the creation of the arts and cultural district fund.

OTHER SUBSTANTIVE ISSUES

The New Mexico legislature created the preservation income tax credit in 1984 through Act 7.2-18.2 and 7.2A-8.6, NMSA1978. The HPD Preservation Division and the Cultural Properties Review Committee have assisted 530 projects that successfully rehabilitated cultural properties generating more than \$10 million in projects in the last five state fiscal years for construction and services in communities statewide. The state has seen a five-to-one return on credits granted property owners for rehabilitation.

Small and medium-sized businesses (as will be found in the Arts & Cultural Districts) generally have little income tax liability. Therefore, it is doubtful that the changes provided in the bill will create the envisioned incentive. Out of the approximately 50 completed projects in the state income tax credit program SFY06, only three were commercial projects, one each in Santa Fe, Albuquerque and Silver City.

Other tax incentive options such as rebates or credits against CRS may be more effective in encouraging private investment in cultural properties in the districts.

The increased cap will typically benefit individuals and partnerships that have higher income-tax liability. The existing provision for a total of five years to use the credit in the year the completed work is approved, and a four-year carry-forward will remain.

The increased cap will benefit property-owners who have properties listed in the State Register of Cultural Properties, either individually or as contributing within a listed historic district, and that are also located within a newly-designated arts and cultural district; and, where the taxpayer/property owner had a tax-liability that enabled them to use the increased credit.

In order to qualify for any tax credits, the following elements must be present:

- The project property must be listed in the State Register of Cultural Properties;

- The project must have eligible work items (e.g., new construction, remodeling and landscaping are not eligible for the program);
- The taxpayer must have New Mexico income tax liability;
- The project must meet program historic preservation standards;
- The property owner must apply to participate in Historic Preservation Division (HPD) historic tax credit program prior to beginning work, and provide project documentation at completion demonstrating the project complied with program standards and was completed as approved by the Cultural Properties Review Committee.

DW/nt