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

SPONSOR Robinson **ORIGINAL DATE** 2/8/07 **LAST UPDATED** **HB**

SHORT TITLE Bonds to Promote Filmmaking **SB** 741

ANALYST Earnest

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	($0.1)	($0.1)	Recurring	General Fund (property tax)
	($0.1)	($0.1)	Recurring	County, Municipality & School District operating funds -- property tax
	($0.1)	($0.1)	Recurring	General Fund gross receipts and compensating taxes on equipment
	($0.1)	($0.1)	Recurring	Local Government gross receipts and compensating taxes on equipment
	($0.1)	($0.1)	Recurring	General Fund – Investment Credit

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Department of Finance and Administration (DFA)
NM Film Office, Economic Development Department (EDD)
NM Municipal League

SUMMARY

Synopsis of Bill

Senate Bill 741 amends the Industrial Revenue Bond Act to include the production or postproduction of films, of which at least 80 percent of the employees are residents of New

Mexico.
The bill permits the principal and interest of industrial revenue bonds (IRB) issued for a film production or postproduction project to be secured by the prints, distribution or other contracts of the filmmaking enterprise.

FISCAL IMPLICATIONS

DFA provides the following fiscal impact analysis. If SB 741 is enacted, a county or municipality would own title to a film production or postproduction project facility financed by industrial revenue bonds for the life of those bonds. Since counties and municipalities are exempt from property taxes on land, buildings and equipment, the state and affected local governments will lose revenue. As an example, the City of Albuquerque website indicates that a company that builds a $15 million plant funded by industrial revenue bonds could recognize $4.3 million in property tax savings on land alone over a 25-year period.

Any equipment bought and installed in a facility financed by an IRB would also be eligible a state and local gross receipts or compensating tax exemption.

Somewhat offsetting these tax revenue losses is the potential revenue generated from the State and local option gross receipts taxes on the operation of film production or postproduction projects financed by these industrial revenue bonds. This positive fiscal impact could offset or exceed a negative fiscal impact from property tax exemptions. However, compensating taxes might not be realized from the use of equipment associated with the film production or postproduction project if investment credits are claimed pursuant to the Investment Credit Act. Additionally, available film production tax credits (25% of expenditures) might be claimed by the filmmaking enterprise conducting the film production or postproduction.

The property tax impacts flow out over 25 years, while the GRT, comp and investment credit impacts will be fully realized within five years.

SIGNIFICANT ISSUES

The NM Municipal League opposes this legislation and notes that IRBs have traditionally been issued for the purpose of attracting or retaining permanent industrial and retail facilities that offer employment opportunities to residents. This bill would expand those purposes to filmmaking that may not be permanent in nature. Moreover, filmmaking is a high risk industry. Issuing IRBs for such ventures could result in a downgrading of the bond rating of a municipality or county that would in turn result in higher borrowing costs that will be passed on to the taxpayers.

The NM Film Office (NMFO) states that federal law classifies film production as manufacturing, possibly making this legislation redundant. According to NMFO, federal law states that "qualified production activity includes film production (with exclusions provided in the statute), provided at least 50 percent of the total compensation relating to the production of the film is compensation for specified production services performed in the United States."

According to DFA, most IRB-financed projects have used the mechanism as a tax-reduction strategy more than a financing mechanism. A parent of the operating company or a sister corporation specializing in finance and construction buys the Industrial Revenue Bonds. Then the operating company pays a fair market rental for the facilities and equipment "owned" by the sponsoring government. This is the revenue sufficient to pay the debt service on the outstanding bonds. These bonds are usually long-term, since the property tax exemption extends only until the bonds are retired.

This bill would provide another incentive to the film industry to shoot films and locate facilities in the state. Other subsidies the state provides to the industry include a 25 percent film production tax credit, wage reimbursement for employees through the Job Training Incentive Program (JTIP), and zero-interest loans from the State Investment Council.

TECHNICAL ISSUES

DFA identified the following technical issues:

- On page 1, the bill title indicates that conflicting amendments to the same section of law are reconciled by the repeal of Laws 2002, Chapter 25, Section 1. It seems as though a repeal section might need to be added to the bill.
- On page 3, line 15, after "(7)" it might be helpful to add the phrase, "a filmmaking enterprise for". This additional phase parallels the language added in Section 3 of the bill.

OTHER SUBSTANTIVE ISSUES

DFA finds that a local government that sponsors a film production facility is simultaneously imposing an investment credit liability on the general fund. Although film production is neither specifically included or excluded from the 5% investment credit on equipment, “manufacturing” is defined to mean “combining or processing components or materials, including recyclable materials, to increase their value for sale in the ordinary course of business, including genetic testing and production, but not including: (1)construction; (2) farming; (3) power generation, … or (4) processing natural resources. This definition seems to expand sufficiently to include equipment needed for film production, for which the final product is a film recorded on a tangible medium, such as celluloid, CD or DVD.

WHAT ARE THE CONSEQUENCES FOR NOT ENACTING THIS BILL

The consequences of not enacting this bill are unclear. Filmmaking facilities – especially digital and postproduction facilities – may qualify under the definition of manufacturing activity. If such a determination is found, IRBs for these facilities could be issued under current statute.

BE/mt