



the NMDOT would be allowed to dispose of property without the oversight provisions normally applied by law.

Synopsis of SFL Amendment #2

Senate Floor Amendment #2 to Senate Bill 759 establishes that the New Mexico Finance Authority Act oversight Committee shall oversee the NMDOT's administration of the Commuter Rail Act.

Synopsis of SFL Amendment #1

Senate Floor Amendment #1 to Senate Bill 759 as amended strikes section 9 of the Bill in its entirety. This section had provided that *"In order to accomplish its purpose, the Commuter Rail Act shall be liberally construed."*

Synopsis of SFC Amendment

Senate Finance Committee Amendment to Senate Bill 759 as amended modifies:

1. the NMDOT ability to "...sell, lease or grant easements or rights of way or other property interests over or otherwise dispose of real or personal property directly related to a commuter rail system" from a value of "reasonable consideration to "appraisal value."
2. Changes the proposed exemption to the Procurement Code to acquisitions of "...materials and equipment..." rather than to all goods, services, construction or professional services.

Synopsis of SJC Amendment

Senate Judiciary Committee Amendment to Senate Bill 759 removes the authority of NMDOT to determine fares. The amendment makes this subject to determination of the Public Regulation Commission as outlined within the applicable provisions of Section 63-7-1.1 NMSA 1978.

Synopsis of Original Bill

Senate Bill 759 establishes a Commuter Rail Act which gives the NMDOT the necessary authority to coordinate a program of commuter rail transportation within the state and for NMDOT to negotiate with neighboring states to expand commuter rail service outside of the state. It also establishes a Commuter Rail Enterprise Fund for the purpose of planning, design, ownership, operation, management and supervision of a commuter rail system.

This bill exempts the NMDOT from the provisions of the state's Procurement Code with respect to the acquisition of goods, services, construction or professional services related to the Commuter Rail Act.

**FISCAL IMPLICATIONS**

The NMDOT estimates that the Commuter Rail Enterprise fund is expected to receive revenues that will be used on operations of the commuter rail system. The current operational costs, Belen to Bernalillo, are estimated by MRCOG and the NMDOT at \$9.6 million annually. When service

is expanded to Santa Fe, it is estimated by the department that operations for the entire route from Belen to Santa Fe will be approximately \$15 million annually.

The NMDOT projects that the Commuter Rail Enterprise Fund will receive the following revenues:

• fare box collections -	\$ 300,000
• BNSF maintenance payments -	\$ 1,250,000
• Amtrak usage fees -	\$ 100,000
• miscellaneous permit and license fees for right of way usage -	<u>\$ 300,000</u>
Total projected revenue	\$ 1,950,000.

Current operational costs are being offset by Federal Funds available through FHWA Congestion Mitigation and Air Quality (CMAQ) funding at the rate of \$10 million annually for the first three years of operation.

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.

### **SIGNIFICANT ISSUES**

The bill establishes a Commuter Rail Enterprise Fund that enables the department to deposit collections from fees, fares and permits; and this fund will serve as the operating fund in future years for commuter rail.

The bill clarifies and articulates the powers necessary for the department to plan, design, construct, maintain, own, operate, equip, manage and supervise a commuter rail system. These powers are more specific and are in addition to the power granted to the department in the Public Mass Transportation Act. The NMDOT acknowledges that the Public Mass Transportation Act already provides the NMDOT with the authority and powers necessary to operate a commuter rail program. Additionally, Section 9 of the bill provides that *“In order to accomplish its purpose, the Commuter Rail Act shall be liberally construed.”*

This bill further exempts the NMDOT from the provisions of the state Procurement Code with regard to commuter rail. Concern exists that there would be no controls, rules, regulations or oversight established within statute that would protect the public’s interest with respect to how the Commuter Rail Enterprise funds are spent. The NMDOT currently complies with the provisions of the Procurement Code for all of its programs to include highway construction. It is unclear as to why the commuter rail system would be exempt from the provisions of the procurement code.

The PRC expresses significant concern that SB 729 impinges upon the statutory authority of the PRC’s over railroads. The PRC argues that SB 759 creates a conflict between the Commission’s authority to set all charges and rates of railway companies and other transportation companies and common carriers within the state under NMSA 1978, § 63-7-1.1 A and § 4E of the Commuter Rail Act that gives NMDOT the authority to set passenger fares for Rail Runner.

**TECHNICAL ISSUES**

Amending the Public Mass Transportation Act may be a more appropriate method to addressing this issue rather than creating a new statute. The NMDOT indicates that it has already been given powers under the Public Mass Transportation Act to operate a commuter rail service and that the language of SB 729 clarifies and articulates these powers more specifically to avoid any misinterpretation of the Department's authority to operate.

The PRC indicates that a rate-setting conflict between the Commission and DOT could lead to administrative hearings and/or litigation if not resolved in SB 759.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The PRC states that passenger rate-setting authority over railroads including Rail Runner will continue to reside with the Commission.

GM/mt:csd