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

ORIGINAL DATE 1/29/08
SPONSOR Barela **LAST UPDATED** **HB** 451

SHORT TITLE Greenfield Tax Increment Districts **SB**

ANALYST Francis

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	100.0	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	NFI			

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to HB276, SB398
Conflicts with SB434

SOURCES OF INFORMATION
LFC Files

Response Received From
Department of Finance and Administration (DFA)
Economic Development Department (EDD)

SUMMARY

Synopsis of Bill

House Bill 451 would make several changes to the Tax Increment for Development Act (5-15 NMSA 1978).

1. Defines "greenfield tax increment for development district" as a tax increment for development district (TIDD) that has not been previously developed and is not currently

served by municipal or county public infrastructure and whose plan primarily relies on new residential and commercial structures rather than the renovation of existing structures.

2. Require a city or county to notify the Department of Finance and Administration, the Taxation and Revenue Department, and the Legislative Finance Committee about TIDD related actions including adoption of a TIDD ordinance or resolution and public notice of hearing.
3. Change the election statute for TIDD boards to require one of the TIDD board members to be the Secretary of DFA or designee.
4. Changes the maximum state increment percentage to 50 percent for non-greenfield TIDDs and 20 percent for greenfield TIDDs with the opportunity to increase the increment if certain conditions are met.
   - Land, infrastructure and capital for public school facilities
   - Transit-oriented development
   - 20 percent affordable/workforce housing
5. Adds a restriction on the Board of Finance (BOF) approval of the increment to ensure that the value of projected revenues meets or exceeds costs of providing services to the TIDD.
6. Allow Board of Finance to ask applicants to fund an independent review of their fiscal and economic study.
7. Revert excess revenue not required for debt service on long term bonds to taxing entity.
8. Requires legislative authorization of TIDD bonds to include the maximum value authorized.
9. Creates new reporting requirements of the TIDD
   - Accounting for all revenues and expenditures
   - Identify and report on all incentives and capital outlay appropriations the TIDD receives
10. Creates a Tax Increment Financing task force made up of DFA, TRD, NMFA, New Mexico Association of Counties, New Mexico Municipal League, AFSCME, NM chapter of American Planning Association, LFC, affected neighborhoods, and members of the public at large. The task force shall evaluate the implementation and effect of the Tax Increment for Development Act and the consequences of approving additional greenfield TIDDs. The focus will be on long term impacts on the general fund, local government finances, other states' experience, and other issues.

House bill 451 appropriates $100 thousand from the general fund to legislative council service for costs associated to the TIDD task force.

There is an emergency clause so the bill takes effect upon signature of the Governor.

FISCAL IMPLICATIONS

The appropriation of $100,000 contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY09 shall revert to the general fund.

HB451 would not affect either of the two TIDDs currently in existence: Mesa del Sol and Westland DevCo (a.k.a. SunCal). Since the limitation on greenfield development applies to future applicants, there is no way to calculate a fiscal impact.

SIGNIFICANT ISSUES

HB451 is a response to the experience of the last two years since the Tax Increment for Development Act has been in place and how it has been used and interpreted by the many players working on the Mesa del Sol process and the Westland DevCo process. Along the way there were many features of the legislation where there was no clear guidance and it became apparent to many participants and observers that the legislation could be improved. Particularly from the state's point of view there are very few oversight and accountability mechanisms to safeguard the state's investment in these developments. In unincorporated areas of a county, this means that the state is financing upwards of 90 percent of local government infrastructure with very little input into the process and approvals.

Task force. The Tax Increment for Development Act was passed in the 2006 session and had not been considered by any interim committees before its passage. The statute was based on other laws such as the public improvement district act and the metropolitan redevelopment act but there was little in the way of public input into the design of the law. Now, there have been three TIDDs approved under the law (Mesa del Sol, Westland DevCo, downtown Las Cruces) and many in the state feel that there is reason to revisit it and see if there are ways to improve it. State economists feel that the task force would help in creating and implementing a common framework to evaluate TIDDs and the fiscal and economic analyses TIDD applicants provide.

DFA is concerned that the language appropriating $100,000 needs to include the ability to hire outside consultants or pay for econometric software so that economists under the auspices of the task force can develop models for TIDD analysis.

DFA:

> A portion of the appropriation provided in the bill could be used, perhaps, to analyze the economic consequences of the two existing projects -- SunCal and Mesa del Sol -- using a computable general equilibrium model of the state and regional economies. The most advanced model available to State analysts is the Policy Insight Model v. 9.5 provided by REMI (Regional Economic Models, Incorporated) of Amherst, MA. The State Department of Transportation owns a seven-region version of this model and at least two economists on staff at LFC, DFA, TRD and DOT have some level of familiarity with this sophisticated model. DFA economists can redo the analysis of the SunCal project as an exemplar of a large-scale, greenfield TIDD project. This comprehensive analysis can be used as the base case for risk analysis if some of the assumptions in the current analysis or the redone analysis are allowed to vary.
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> Separating the Task Force's duties into a technical analysis and a policy analysis based on the technical analysis seems appropriate. A collateral benefit is that a comprehensive technical analysis will lead to recommendations on standardized methodology that can be applied to all future TIDD applications.

DFA also recommends that one of the task force goals should be to define what the term "best interests of the state" means as this is essentially the only criteria BOF has to approve a diversion of state revenue.

The task force is made up of a diverse group of interested parties though it does not seem to include a member of the developer community which would make it more inclusive. The task force is charged with evaluating:

- The long term fiscal impact on the general fund
- The long term fiscal impact on local government finances
- The amount of state and local GRT committed to TIDDs
- Other states' experience, particularly with using state level tax revenue
- Consequences of TIDDs not following the procurement code
- Economic development incentives in TIDDs
- Likely consequences if a TIDD fails
- Treatment of changes to the TIDD boundaries and board
- Other avenues for providing financing for public infrastructure for new developments.

Greenfields. HB451 would limit the amount of incremental state gross receipts tax (GRT) to 20 percent with additional amounts if the development satisfies certain conditions. A "greenfield" is essentially raw land where there has been no development before. With the exception of downtown Las Cruces, all of the TIDD applications seen so far have been in greenfields rather than redevelopment areas. The concern is that it is much easier to develop greenfields, particularly those adjacent to developed areas, than existing areas and therefore should not require much in the way of subsidies. Infill areas, areas within service areas that may be blighted or have fallen into disuse, are much more expensive and so are less attractive to developers. It is for these areas that tax increment financing was first established in California in the 1950s.

By placing additional hurdles on greenfields, there is much more assurance that the development will satisfy key state and local interests: affordable housing, transit oriented development, and investments in school facilities.

State Notification. There is no uniform method of notification to appropriate state entities that a county or municipality has passed an ordinance allowing TIDDs. At present, state agencies (Board of Finance (BOF), New Mexico Finance Authority (NMFA), Taxation and Revenue Department (TRD), and LFC) rely on word of mouth and the media to find out about municipalities and counties who are considering or who have passed TIDD legislation. **It is important to have enough time to do a thorough analysis at the state level which means the state agencies should receive notification as soon as legislation or an application is approved.** Dona Ana and Bernalillo Counties, the Cities of Las Cruces and Albuquerque, and the Town of Bernalillo have passed ordinances or policies to allow TIDDs.

An example of why this is necessary: LFC staff heard about the City of Farmington passing a TIDD ordinance and upon investigation on the City's website, there has been discussion about an ordinance and a particular project but it was pure chance that this information was uncovered.

State Representation. Currently, there is no state representative directly charged with monitoring TIDDs and changes to the development plan of a TIDD after approval of the Board of Finance (BOF) and the authorization of the legislature to issue bonds although the New Mexico Finance Authority (NMFA) does review the indenture agreement for the bonds when they are issued. As an example, the City of Albuquerque has approved changes to the Mesa del Sol TIDD master development plan with no input from the state that include use of proceeds and incremental revenues. It is unclear how it will affect the state's increment and the allowable uses but it illustrates the point that the state which provides the bulk of the financing for tax increment districts through the gross receipts has the least input into the process. It is necessary for appropriate oversight of state funds to have a state official participate in the process.

The idea of state representation, however, on what is a local board raises issues about jurisdiction. A useful example is the capital outlay process where funds are appropriated to local governments for capital infrastructure. The local government division of the Department of Finance and Administration is responsible for overseeing the projects and ensuring the money is expended as intended by the legislature.

DFA supports this item and even suggests that the majority of the board be state representatives since it is the state that is providing the bulk of the financing.

Allow BOF to ask applicant to pay for study. Currently, the governing entity to whom a developer is applying can ask that the developer finance an independent study to validate the application. BOF does not have this power and would need to finance a study on its own. DFA and LFC economists have been the principal reviewers of the study which requires an enormous resource commitment. An independent review commissioned by the city of Albuquerque for Mesa del Sol was crucial to that body making its decision.

Revert excess revenues. This language clarifies what is to happen to excess revenues not needed for debt service. Under current law, there is no precise guidance as to what happens if the TIDD collects more revenues than needed. At the beginning of the TIDD, this will not be an issue since all of the revenue will be used for debt service on short term notes ("sponge" bonds) but as the build-out is completed and the long term bonds are in place, the TIDD may generate revenues above what is needed to service the debt. This is another important reason to have state representation on the TIDD board because if there is additional money available there may be an incentive to modify the master development agreement to allow for additional infrastructure not included in the original plan.

Detailed annual reporting. HB451 makes the reporting requirements of TIDD boards much stronger. Under current law, a TIDD board only has to separately account for all revenues and indebtedness based on gross receipts tax and property tax increments. HB451 would require the TIDD board to account for all expenditures and the total value of state and local tax incentives in the district. The TIDD board would be required to submit a report to the LFC, DFA and the county and municipality in which the TIDD is located.

ADMINISTRATIVE IMPLICATIONS

Depending on the number of TIDDs formed, the requirement that one board member is the Secretary of DFA or designee may place a significant burden on the department. There should be consideration to providing an FTE to DFA for the sole purpose of overseeing TIDDs to ensure that the state is appropriately informed and represented in the development plans and use of the bond proceeds.

Requiring notification of ordinances and hearings should not place a significant burden on local governments.

ALTERNATIVES

Below are other issues that merit consideration but are not part of this proposal.

Board governance. The governing body can designate itself as the board of directors or can appoint a board of directors. If the board is appointed, three of the board members serve six year terms and two serve four years initially. At the end of the terms, board members are re-elected by property owners and qualified electors as defined in the statute.

To date there have been two proposals put forward: Mesa del Sol and Westland DevCo. In all of the cases, the build out for the development is much longer than six years meaning that the developers will be the majority property owners at a time when the board members are up for election. This situation would allow the developer to elect a board of their choosing to manage the TIDD financing. In the case of Mesa del Sol, the city has preempted this by designating the council as the TIDD board. Board governance was a controversial issue with the Verde Group, which withdrew its application, in Dona Ana County. This is particularly an issue for TIDD's created in unincorporated areas since the state increment will proved 80 to 90 percent of the financing.

Reporting. Requiring detailed annual reporting that includes infrastructure completion status and employment and wage data would be another option to consider to keep the legislature and the executive informed about the progress and success of TIDDs.

Bond Financing. The language regarding the use of the tax increment should be strengthened. Since the language allows for any type of debt service, short term or "sponge" notes can be used. This allows the entire increment to be used rather than that needed to service long term bond. The long term bonds are part of the development plan and it is unclear whether the legislative intent was to allow short term notes. All of the applications received so far including the successful Mesa del Sol involve the use of cash or short term financing for the bond proceeds not needed to retire debt.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB276 and SB398 authorize the Westland DevCo bonds to be issued. The total amount of bonds authorized is $629 million.

SB434 places a moratorium on TIDD approvals for greenfield developments to give a task force time to study the issue and make recommendation.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Currently it is onerous to follow all of the local government actions to determine when and where the next TIDD will be considered. The likelihood of a TIDD application not getting a thorough review increases if it is unexpected.

Without formal state oversight of the TIDD operations, the TIDD board may make changes to the development plan that are not in the best interests of the state. It is critical that the state be able to add its input when uses of bond proceeds are being approved by the TIDD board.

POSSIBLE QUESTIONS

Who is responsible for monitoring Tax Increment for Development Districts now?
What kinds of financing structures are being used or proposed currently?
How does LFC and DFA staff find out about applications and ordinances?

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