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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/23/08

SPONSOR Lovejoy LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Capital Outlay to Tribal Infrastructure Fund SB 18/aSFC/aSFI#1

ANALYST Weber

### REVENUE (dollars in thousands)

| Estimated Revenue |                             |      | Recurring<br>or Non-Rec | Fund<br>Affected |
|-------------------|-----------------------------|------|-------------------------|------------------|
| FY08              | FY09                        | FY10 |                         |                  |
|                   | See fiscal section<br>below |      |                         |                  |

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Finance and Administration (DFA)

Indian Affairs Department (IAD)

NM Aging and Long Term Services Department

### SUMMARY

#### Synopsis of SFI#1 Amendment

1. The reference to Chapter 1 noted in the SFC amendment comments below is changed to Chapter 2.

#### Synopsis of SFC Amendment

1. The location of the changes is changed from Laws 2006, chapter 111, Section 76 to Laws 2007, Chapter 1, Section 2. The reference to Chapter 1 is probably a mistake since Chapter 1 is the "Feed Bill". However, the next line references Laws 2007, Chapter 2 which is Senate Bill 710, a capital bill and probably the correct reference.
  2. Section 2. Laws 2007 Chapter 2 Section 1 is changed to read.
- A. Except as otherwise provided in this section or another section of this act, the unexpended balance of an appropriation made in this act from the general fund shall revert to the originating fund as follows:

- (1) for projects for which appropriations were made to match federal grants, six months after completion of the project;
  - (2) for projects for which appropriations were made to purchase vehicles, emergency vehicles or other vehicles that require special equipment, heavy equipment, educational technology or equipment or furniture that is not related to a more inclusive construction or renovation project, at the end of the fiscal year two years following the fiscal year in which the appropriation was made for the purchase; and
  - (3) for all other projects for which appropriations were made, within six months of completion of the project, but no later than the end of fiscal year 2011.
- B. Upon certification by an agency that money from the general fund is needed for a purpose specified in this act, the secretary of finance and administration shall disburse such amount of the appropriation for that project as is necessary to meet that need.
- C. Except for appropriations to the capital program fund, money from appropriations made in this act shall not be used to pay indirect project costs.
- D. The unexpended balance of an appropriation made from The general fund or other state fund, including changes to prior appropriations, to the Indian affairs department or the aging and long-term services department for projects located on lands of an Indian nation, tribe or pueblo, including projects that have been Reauthorized, shall revert in a time frame set forth in Subsection A of this section to the tribal infrastructure project fund
- [D.] E. For the purpose of this section, "unexpended balance" means the remainder of an appropriation after reserving for unpaid costs and expenses covered by binding written obligations to third parties.

The analysis of the original should still apply since the funds do not revert to the original fund but rather the tribal infrastructure fund.

#### Synopsis of Original Bill

Senate Bill 18 amends the Laws of New Mexico 2006, Chapter 111, Section 76 to allow unexpended or unencumbered capital outlay appropriations for tribal-related projects to revert to the Tribal Infrastructure Project Fund ("Project Fund"). Reversions to the Project Fund would only occur for appropriations in that specific bill, both original and reauthorized, made to the Indian Affairs Department ("IAD") or to the Aging and Long-Term Services Department ("ALTSD"). The bill also would recodify the Tribal Infrastructure Act under Title 6 of the NM Code, namely the Public Finance provisions.

#### **FISCAL IMPLICATIONS**

DFA notes that although the revenue impact of this bill is largely indeterminate, it is not zero. Unexpended balances from capital outlay appropriations funded from the general fund currently revert to the general fund no later than the end of the fiscal year that is four years after the enactment of the law providing the appropriation. For example, the global reversion date in the 2007 capital outlay bill was as on or before the end of FY11.

For 2007 general fund capital outlay in Indian Country was for at least 165 projects totaling \$28.5 million. This is an average of over \$172.0 per project.

Assuming that 10% of the project money is unexpended, there is a \$2,900.0 transfer of unexpended appropriations from the general fund to the tribal infrastructure fund by the end of FY11. Although the amount of general fund capital outlay is likely to be much smaller in 2008 and subsequent years than in 2007, this bill has a reasonable likelihood of creating a \$1,000.0 general fund revenue loss on a recurring basis.

DFA continues, that this was never much of an issue in previous years, when virtually all of the state's capital outlay funds were derived from severance tax or general obligation bonds. However, over the past few years, with substantial general fund balances being available and used for capital outlay, redirecting reversions to another fund creates a revenue decrease to the general fund in future years, when the general fund may need the reversionary revenue to fund program costs.

### **SIGNIFICANT ISSUES**

Indian Affairs reports.

SB 18 was endorsed by the Interim Indian Affairs Committee at their Nov. 7, 2007 meeting.

Currently, all unexpended or unencumbered balances from capital outlay appropriations for tribal projects revert to the originating fund at the end of the appropriation date. SB 18 is designed to allow certain tribal related capital-outlay appropriations made to IAD or the ALTSD to revert instead to the TIF Project fund. SB 18 would also help to preserve the appropriations' original intent to promote and develop the physical infrastructure of New Mexico's Tribes, Pueblos, and Nations by making reversions to the Project Fund.

Importantly, SB 18 would not preclude legislators from re-appropriating any of these unexpended or unencumbered funds prior to their reversion.

### **OTHER SUBSTANTIVE ISSUES**

Indian Affairs Department notes that the New Mexico Tribal Infrastructure Act of 2006 established permanent funds to provide financial support to New Mexico's Tribes, Pueblos, and Nations for infrastructure improvement projects (NMSA 9-21-18). The Tribal Infrastructure Act created two funds: the Tribal Infrastructure *Trust* Fund and the Tribal Infrastructure *Project* Fund. Both are held within the State Treasury and can be funded by monies appropriated by the State Legislature. The *Trust* fund is held in perpetuity and acts as an endowment for the *Project* Fund, which is administered by the Tribal Infrastructure Board. SB 18 proposes that any unencumbered or unexpended balances from certain tribal-related capital outlay projects would revert to the *Project Fund* and be available for tribal infrastructure grants awarded by the Board.

During FY 2005, 2006, and 2007, appropriations totaling \$13 million were granted from the Project Fund by the TIF Board for tribal infrastructure projects throughout the state.

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