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FISCAL IMPACT REPORT

ORIGINAL DATE 02/04/10
LAST UPDATED 02/16/10 **HB** _____

SPONSOR Harden

SHORT TITLE NMFA Securities Requirements **SB** 120/aHJC

ANALYST Kehoe

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
NFI	NFI	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Finance Authority (NMFA)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to Senate Bill 120 reinstates current law requiring that all securities purchased by NMFA be accompanied by documentation that includes “disclosure of any pending litigation.”

Synopsis of Original Bill

Senate Bill 120 amends the New Mexico Finance Authority Act (Chapter 6, Article 21, Section 6-21-10, subsection B) changing requirements for securities purchased by the Authority.

SIGNIFICANT ISSUES

Current law provides that “All securities purchased at any time by the authority, upon delivery to the authority, shall be accompanied by all documentation required by the authority and shall include an approving opinion of recognized bond counsel, certification and guarantee of signatures and *certification as to no litigation pending as of the date of delivery of the securities challenging the validity or issuance of such securities.*”

Senate Bill 120 deletes the requirement of certification that no litigation is pending as of the date of delivery of the securities that may challenge the validity of issuance of the securities.

According to NMFA the current language is problematic because “litigation” does not differentiate between serious or frivolous litigation that may have no relevance to the transaction.

NMFA indicates current loan agreements require the borrower to submit a non-litigation certificate prior to loan closure, and NMFA legal counsel is able to determine if the litigation is substantive to the transaction.

Examples of non-meritorious litigation cited by NMFA might include: “1) lawsuits that are clearly untimely on their face; (2) lawsuits challenging the use or pledge of revenues not directly related to the loan; or (3) a lawsuit brought by a person clearly without standing to bring the claims against the borrower or the NMFA. A specific example is the lawsuit brought against NMFA by certain residents of the Angel Fire Public Improvement District indirectly challenging a loan made by the NMFA, which was clearly untimely on its face, and which was dismissed by the district court on that basis.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to NMFA, the consequences of not enacting this bill will allow transactions conducted through NMFA to be subject to irrelevant litigation which can delay the closing of transactions until an indefinite date, thus putting important public projects at stake of not being able to be completed.

LMK/mew