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

		ORIGINAL DATE	02/05/10		
SPONSOR	SFC	**LAST UPDATED**	02/18/10	**HB**	
SHORT TITLE	Colonias Infrastructure Act			**SB**	CS/CS/279/aSFl#1
				ANALYST	White/Aubel

APPROPRIATION (dollars in thousands)

Appropriation			Recurring or Non-Rec	Fund Affected
FY10	**FY11**	**FY12**		
$0.0	$0.0	($11,100.0)	Recurring	Senior Severance Tax Bonding Capacity
$0.0	$0.0	$11,100.0	Recurring	Colonias Infrastructure Project Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

SUMMARY

Synopsis of SFl Amendment #1

Senate Floor amendment number one to the SFC Substitute for Senate Bill 279 inserts language clarifying that a majority of members of the Colonias Infrastructure Board shall constitute a quorum and that at least a majority of that quorum must vote in the affirmative for action to be taken by the board.

Synopsis of Original Bill

The Senate Finance Committee Substitute for Senate Bill 279 requires the State Board of Finance (BOF) to allocate 5 percent of senior severance tax bonding (STB) capacity for use by the Colonias Infrastructure Board to fund projects. Such an allocation would not take effect until FY12.

The substitute creates the Colonias Infrastructure Act, which creates the Colonias Infrastructure Board consisting of the following five voting members:

- The Secretary of Department of Finance and Administration (DFA), or designee;
- The Secretary of the Environment Department (NMED), or designee;
- The CEO of the New Mexico Finance Authority (NMFA), or designee;

- The Executive Director of the New Mexico Mortgage Finance Authority (MFA), or designee,
- A public member appointed by the president pro tempore of the Senate;
- A public member appointed by the Senate minority leader;
- A public member appointed by the Speaker of the House;
- A public member appointed by the House minority leader.

The substitute also requires the board to be made up of five advisory non-voting members including:

- The executive director of the south central council of governments;
- The executive director of the southwest council of governments;
- The executive director of the southeastern economic development district;
- The executive director of the New Mexico Association of Counties;
- The executive director of the New Mexico Mortgage Finance Authority.

The board will be staffed by the NMFA who shall also administer the project fund and, "at the direction of the board, process, review and evaluate applications for financial assistance from qualified entities; and…administer qualified projects that receive financial assistance."

The committee substitute would also create the "Colonias Infrastructure Trust Fund" within the State Treasury and is directed to be invested by the State Investment Officer (SIO) in the manner that land grant permanent funds (LGPF) are invested. An annual $10 million distribution from the trust fund will be made to the "Colonias Infrastructure Project Fund" if adequate money is available. Twenty percent of the annual financial assistance from the project fund must be used for qualified affordable housing projects within the colonias area. Once the distribution becomes less than an amount equal to 4.7 percent of the average year end market value of the trust fund for the preceding five calendar years, the annual distribution would become 4.7 percent of the preceding five-year average.

The effective date of the committee substitute is July 1, 2011.

FISCAL IMPLICATIONS

Because of the delayed effective date of the proposed legislation, STB capacity would not be affected under the committee substitute until FY12. Based upon the January consensus revenue forecast, total senior STB capacity is anticipated to be $221.2 million in FY12. After an existing 10 percent statutory allocation to the Water Project Fund, remaining capacity is estimated to be approximately $199.1 million. The substitute includes an additional recurring allocation of 5 percent to the Colonias Infrastructure Board. As a result, approximately $11.1 million will be appropriated to the Board and FY12 net senior capacity would decrease to approximately $188.0 million. Net senior STB capacity makes up capital outlay for appropriation by the legislature each year during the regular session. Supplemental STB capacity, allocated for use by the Public School Capital Outlay Council (PSCOC), would not be affected by the proposed legislation.

LFC FORECAST OF CAPITAL OUTLAY AVAILABLE		
	FY12	
	Current	**SB 279**
Senior Long-Term Issuance	149.5	149.5
Senior Sponge Issuance	71.7	71.7
Senior STB Capacity - January 2010	**221.2**	**221.2**
Water Project Fund (Statutory 10% of STB)	*(22.1)*	*(22.1)*
Proposed Colonias Infrastructure Board Allocation (5%)	-	*(11.1)*
Net Senior STB CAPACITY	**199.1**	**188.0**

This substitute provides for continuing appropriations from the Severance Tax Bonding Fund. The LFC has concerns with including continuing appropriation language in statutory provisions, as earmarking reduces the ability of the legislature to establish spending priorities. The substitute also creates the Colonias Infrastructure Trust Fund in order to provide additional annual distributions to the project fund. However, no funding is appropriated to the trust fund in the substitute.

SIGNIFICANT ISSUES

Currently there is no statutory authority creating a “colonias infrastructure” fund. As a result, key processes for administering the fund and the related projects are not developed, leading to the potential for the lack of procedures, accountability and oversight to ensure proceeds are effectively managed. Procedures were developed in relation to appropriations made for colonias infrastructure in 2005 and 2006 that included essential criteria to prioritize projects, plan infrastructure to meet specific needs, recognize the potential for leveraging funds, and qualify by project readiness. Oversight was provided by both the Department of Finance and Administration (DFA) and the Environment Department, and the grant agreement required biennial reporting. However, an LFC review (July 13, 2006) of the 2005 colonias initiative noted that Local Government Divison (LGD) was unable to produce the reports. In addition, the review noted that an allocation from the 2006 colonias appropriation was made to Bernalillo County, which does not contain a colonia as defined by the Department of Housing and Urban Development (HUD). Staff concluded that “the LGD should ensure the development of a plan, criteria and implementation process prior to requesting state funds” to meet the needs of colonias in the state.”

OTHER SUBSTANTIVE ISSUES

The substitute requires that the “Colonias Infrastructure Trust Fund” be invested by the SIO as per the LGPF. This could create some administrative and practical issues as the LGPF currently invests in a number of alternative asset classes which would not be practical for a smaller fund to invest in. As the trust fund would most likely be much smaller than the LGPF for many years this mandate may be at first difficult to accomplish.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The SFC substitute for SB 279 relates to HB 162 which would provide an annual appropriation from the Severance Tax Bonding Fund to the Tribal Infrastructure Fund in an amount equal to 10 percent of annual STB capacity. If both pieces of legislation were enacted, FY12 STB capacity would be $33.2 million lower than currently estimated, leaving only $165.9 million available for appropriation during the 2012 regular session.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If the proposed legislation is not enacted no allocation will be made from annual STB capacity for use by the Colonias Infrastructure Board. The legislature will still have the ability to make annual appropriations of STB proceeds for colonias infrastructure projects at its discretion. Net senior STB capacity to be appropriated by the legislature will remain at $199.1 million for FY12.

DMW/mew:svb