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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 02/01/14  
**SPONSOR** SCORC **LAST UPDATED** 02/12/14 **HB** \_\_\_\_\_

**SHORT TITLE** Tax Increment District Base-Years **SB** CS/140/aSFC

**ANALYST** Graeser

### REVENUE (dollars in thousands)

| Estimated Revenue |       |       |       |       | Recurring<br>or<br>Nonrecurring | Fund<br>Affected  |
|-------------------|-------|-------|-------|-------|---------------------------------|---|
| FY14              | FY15  | FY16  | FY17  | FY18  |                                 |   |
|                   | (***) | (***) | (***) | (***) | Recurring                       | General Fund, County General Fund,<br>Municipal General Funds |
|                   | ***   | ***   | ***   | ***   |                                 | Selected TIDDs  |

(Parenthesis ( ) Indicate Revenue Decreases)

\*\*\* The action of this bill is to allow existing Tax Increment Development Districts (TIDDs), of which there are 10 districts in six projects in the State, to rebase and provide a different base year's activity than was originally approved. TRD notes, "... this bill has no direct fiscal impact. Any impact would depend on the decision of the TIDD boards [and the SBOF, ed.]. Assuming that a TIDD board would only choose to change base years to one that would allow for a greater distribution, any impact would likely be a negative revenue impact to the General Fund and local governments that dedicate increments, and a positive impact to the TIDD. The magnitude of the impact would depend on the magnitude of the difference between the original base year and the newly chosen base year." The fiscal effects are complicated. See "FISCAL IMPLICATIONS" below.

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

|              | FY14 | FY15 | FY16 | 3 Year<br>Total Cost | Recurring or<br>Nonrecurring | Fund<br>Affected |
|--------------|------|------|------|----------------------|------------------------------|------------------|
| <b>Total</b> |      | ***  | ***  | ***                  | Nonrecurring                 | General<br>Fund  |

(Parenthesis ( ) Indicate Expenditure Decreases)

\*\*\* Analyzing and approving Tax Increment Development Districts imposes substantial impacts on the State Board of Finance (SBOF) and the New Mexico Finance Authority (NMFA) as well as the Legislative Finance Committee (LFC) staffs and the staffs of various legislative interim and session committees. Per current statute, these costs cannot be passed to the applicant, but are obligations against the agencies' or entities' budgets. The consensus of LFC and SBOF is that a rebasing of a TIDD approval would require a complete analysis to be performed by the applicant and a complete review of the new application by Legislative Finance Committee (LFC) and Department of Finance and Administration (DFA) economists and a substantive review by

NMFA's finance experts. The cost of this analysis is not included in the operating budgets of any of the three entities.

## **SOURCES OF INFORMATION**

LFC Files

### Responses Received From

Department of Finance and Administration/State Board of Finance (DFA/SBOF)

New Mexico Finance Authority (NMFA)

Taxation and Revenue Department (TRD)

## **SUMMARY**

### Synopsis of SFC Amendment

Senate Finance Committee amendment to SCORC substitute SB 140 makes a small number of technical and grammatical clarifications.

- Changes the definition of “developer” to include the possibility that the project supported by the TIDD could be sold, with the approvals remaining intact.
- Provides that copies of required notices are sent to all interested parties, particularly the developer, the State Board of Finance (SBoF) and the local governments that have approved a gross receipts tax increment.

### Synopsis of Bill

The Senate Corporations and Transportation Committee substitute for Senate Bill 140 adds three sections to the Tax Increment for Development District Act (5-5-1 et. Seq NMSA 1978). The new sections would allow a tax increment for development district (TIDD) that had previously been granted approval of a gross receipts tax increment to change the base year for calculating the amount of the increment. The three new sections mirror the notification and decision timelines of the underlying act. The SBOF may approve the revision of the base year with the following provisos:

- Once during the lifetime of the district;
- The proposed new year is a completed calendar year;
- No TIDD bonds supported by the increments have been issued;
- There is no unresolved objection to the revision by the developer or by a local government that has dedicated a tax increment to the district;
- The SBOF finds that the revision is reasonable and in the best interest of the state.

If the SBOF approves the rebasing, the TIDD board will return any previously distributed increments to TRD for redistribution to the government entities that had approved the TIDD increments. The period for this refunding of the increment is from the original approval to the end of the rebased year.

A substantial difference between the original bill and the SCORC substitute is that substitute bill accords a participating local government a veto over the rebasing.

## EFFECTIVE DATE

The bill carries an Emergency Clause – effective upon passage by 2/3rds of both houses and signature of the Governor.

## FISCAL IMPLICATIONS

The fiscal impact of all of the previous TIDD bills from the original TIDD Act in 2006 has been determined to be “Unknown, but positive.” For all of the approved TIDDs, the developer, the sponsoring local governments, usually an economic consulting firm, the staff of the Economic Analysis Unit of DFA and the SBOF and LFC staff have worked diligently to give some teeth to the determining phrases in the TIDD Act at 5-15-15 (F) NMSA 1978, “...

F. An imposition of a gross receipts tax increment attributable to the imposition of the state gross receipts tax within a district ... (2) based upon review by the state board of finance of the applicable tax increment development plan, the dedication by the state board of finance of a portion of the gross receipts tax increment attributable to the imposition of the state gross receipts tax within the district for use in meeting the required goals of the tax increment plan is reasonable and in the best interest of the state; and (3) the use of the state gross receipts tax is likely to stimulate the creation of jobs, economic opportunities and general revenue for the state through the addition of new businesses to the state and the expansion of existing businesses within the state.

There are no guarantees that economic models will actually represent reality. Recognizing this fact, the later TIDDs were approved for less than the 75 percent maximum allowed in the TIDD Act or for fewer districts than applied for. This prudence was described as “a safety margin.” This was to allow some of the variables involved in building a large-scale economic model for a TIDD project to underperform the assumptions, but have the overall project still be in the best interests of the State.

If a currently approved TIDD applies to the local sponsoring governments and the SBOF for rebasing, all of the entities will study the proposal diligently and recommend approval, approval with modification of the approved increment dedications or disapproval. There may be some risk to the developer because of the middle possibility – approval with modification.

Assuming that sponsoring local governments and the SBOF approve the revision, there may be a modest timing issue and other potential problems with the return of previously collected and transferred gross receipts tax increments. If the rebased year closes more than one year prior to the application for rebasing, there may not be a significant problem. For example, Assume that the original base year was 2007 and the application for rebasing would move the base period to CY 2009. Further assume that approval would be granted in March 2014. TRD implements the rebasing effective with distributions attributable to business activity in July 2014. Shortly thereafter, the TIDD board returns all gross receipts tax increments for the period July 2008 through the end of calendar 2009 to TRD for redistribution to the sponsoring governments. For the period from inception to the current period, the TIDD board has incurred expenses for per diem and mileage for the non-government members, annual financial audits, preparation of budgets for submission to the Department of Finance, Local Government Division (DFA/LGD) and other expenses. However, there should be adequate funds on deposit on behalf of the TIDD board to cover all of the expenses to date and to return the increments for the period from inception to the end of the 2009 rebased period. Since all of the TIDDs approved to date were

approved in 2007 and 2008, this adequacy should extend to all of the previously approved TIDDs. On the other hand, there could be circumstances under which the TIDD board's costs could not be covered by distributions and there would not be sufficient funds to pay off the sponsoring governments.

This bill may be counter to the LFC tax policy principles of adequacy, efficiency and equity. Due to the increasing cost of tax expenditures, revenues may be insufficient to cover growing recurring appropriations. This issue relative to TIDDs has been somewhat controversial for all of the approved TIDDs. Over a period ranging up to 50 years, these arrangements frequently cost the participating State, City and County money in the early going of a project, with other revenues expected to be collected later in the project offsetting the earlier costs and rendering the overall project in the best interest of the State.

Estimating the cost of tax expenditures is difficult. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for a tax expenditure may be ambiguous, further complicating the initial cost estimate of the expenditure's fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures. This is particularly true for assessing the costs and benefits of a TIDD. Several of the TIDDs approved for a State increment have an expected time horizon of decades. The analyses are largely artificial and heavily assumption-based.

## **SIGNIFICANT ISSUES**

The Mesa del Sol project and the Upper Petroglyphs project were “green field” projects with a zero base. There were no gross receipts generated in the districts prior to TIDD approval. The Quorum project, the two Winrock TIDDs and the Las Cruces TIDD are “brown field” TIDDs and have GRT bases greater than zero. Per DFA, “... in 2012, the City of Albuquerque voted to dissolve the Quorum TIDD after its developer sold its interest in TIDD land to Target, thereby changing the development plans for the land from what was anticipated in the TIDD plan.” In FY 2013, TRD collected and distributed \$312,612 from the Quorum portion of the overall project. Of this something more than ½ was distributed to the Quorum board. In FY 2013, as well, TRD collected and distributed in excess of \$2.3 million from the Winrock I and Winrock II TIDD projects. Again, something more than ½ of this total was distributed to the Winrock I and II board.

Per DFA, this bill appears to address the fact that a number of TIDDs were formed just prior to the recent economic recession, the result being that the base year was set during peak economic conditions. In order to create any increment for use by a district, economic activity would have to return to those pre-recession levels. By re-setting the base year, a TIDD would get back to those levels in a shorter time frame.

DFA's comments continue: “Although the provisions of the bill apply to all TIDDs, it will be particularly relevant to the Winrock TIDD [ed. Note: the Winrock project was approved for two TIDDs] located in Albuquerque, which is being developed by Goodman Realty Group. In December 2008, the SBOF approved a dedication of State gross receipts tax increment to TIDDs known as Quorum (developed by Hunt Partners) and Winrock I and II. Quorum and Winrock TIDDs applied jointly to the SBOF, and the SBOF's approval was based on the TIDD plan that contained both developers. However, in 2012, the City of Albuquerque voted to dissolve the

Quorum TIDD after its developer sold its interest in TIDD land to Target, thereby changing the development plans for the land from what was anticipated in the TIDD plan.”

TRD similarly notes, “... this bill would create a mechanism whereby a base year may be changed, presumably to increase the chances of the TIDD succeeding. If a TIDD is established with a base year that happens to be an economic peak, the movement of the economy as a whole may drive gross receipts in the district down below the baseline. If the local governments and the state, representatives of which make up the majority of the TIDD board, decide that it is in the best interest of all involved to change base years, this bill would allow for that. Under current law, there is no mechanism to change the base year if the current base year is unviable. The bill provides for adjusting the base year for gross receipts tax increments, which may be dedicated by the State, counties, and municipalities. The bill does not provide for adjustment of the base year for property tax increments, which may only be dedicated by counties and municipalities.”

The State has approved GRT increments for Mesa del Sol (2007 – five separate TIDDs, that have subsequently been collapsed into one); Upper Petroglyphs (2008 -- 4 of 9 TIDDs submitted, were approved, although TRD shows some GRT activity in seven of the 9 TIDDs enumerated in the application); Quorum (2008); Winrock 1 and 2 (2008); and the Las Cruces TIDD (2008). In all of these cases, the State increment was matched with similar dedication of gross receipts tax and/or property taxes by the city and/or county. The Village at Rio Rancho is also operating with only municipal increment (although in FY 2013, the overall tax collections show as negative.)

The consensus of SBOF and LFC staff is that any application for rebasing under the provisions of this bill would be treated as a completely new application. Previous applications have typically cost the applicant around \$250,000 and the DFA up to 240 hours of economist’s time and effort to review and recommend the appropriate level of State increment. Since the original TIDD approvals in 2007, 2008 and 2009 the SBOF has published regulations that detail the information required for the application. These regulations are quite stringent. It is not at all certain that any of the TIDDs that were approved prior to October 2008 effective date of the regulations would have been approved for the same increments under the provisions of the regulation. The regulations are available at:

<http://www.nmdfa.state.nm.us/uploads/FileLinks/295efad7d6214ccd96f99328dadf84d2/Dedication%20of%20a%20Portion%20of%20the%20State%e2%80%99s%20Gross%20Receipts%20Tax%20Increment.pdf>

Although the intent may well have been to provide a short-cut method of rebasing, the bill requires the BoF to determine that the rebasing is “in the best interest of the State.” This could be as simple as assuming that original analysis will come to fruition in exactly the same way following rebasing, but with a lag between the original base period and the rebased period. Unfortunately, there will be no way for the SBOF and LFC economists to convince themselves that the only difference with rebasing will be a simple lag of time. There are many, many levers in projects the complexity of the big TIDD projects. CS/SB 140 provides participating local governments with a veto. Thus, the application for rebasing will be scarcely less complex than the original application and could be more complex because of the SBOF regulations referred to above.

This bill may be somewhat redundant. If no bonds have been sold, establishing a contract between the TIDD and investors, then the TIDD could suspend activities and any increments from the State (and probably city and county). Then, the developer could reapply for a new

TIDD with a new base. The current TIDD act makes no provision for what to do with increments that have been transferred to the TIDD board, but will not be used to support and amortize long-term infrastructure bonds. It appears that the SBOF and LFC staff will require the developer to prepare a completely new analysis and prospectus based on the rebased year as part of the procedures to be established by SB 140. If that is true, then there is little difference between a new application, de novo and a rebasing procedure pursuant to the provisions of the proposed SB 140. The biggest difference between these two procedures is that if permitted to rebase through SB 140, the TIDD board would refund any increments paid to the board from the original approval through the beginning of the rebased year. It is not at all clear that a repayment would be required if the developer and the TIDD board simply reapplied de novo. If the developer applied for rebasing and was denied by either SBOF or the legislature, then presumably the original approvals would all be intact. As mentioned in the previous paragraph, the intent of this bill may have been to establish a procedure where the only lever was the rebasing. Under this assumption, the analysis would be relatively straightforward – because of the recession that interfered with a financing, particularly financing of large, complex projects, all of the assumptions must be lagged and rebased. This would be as simple a procedure as to say that unless the rebasing were granted, the project would not be viable. However, any reasonable individual would want to examine all aspects of the original analysis to make sure that with a relatively modest change in base period that all of the other assumptions originally used to justify the State increment would still be valid. This bill cannot be thought of as establishing as simplified procedure.

Approval for rebasing may be somewhat daunting. The sponsoring local governments might take a different view of the viability of a project that had not been accomplished on the scale and timeline of the original application and approval. A SBOF with completely new membership since the original approval might have a completely different view of the appropriateness of dedicating General Fund revenue in the short run, even if the project would be in the best interests of the State in the long run. An intriguing possibility arises: what would happen if the developer was unable to convince the sponsoring local governments or the SBOF staff and voting members of the SBOF that the project was viable even with rebasing? If the project is not viable with rebasing, it would presumably not be viable with the original base period. There is no provision in the TIDD act for the State to terminate a TIDD, and once the approval is made, the revenue would continue to flow as measured by the original base period's gross receipts. At some point, the TIDD board could “sponge” any money that had been transferred to the board and use that amount of money (less any transaction costs) for infrastructure development.

#### **PERFORMANCE IMPLICATIONS:**

The LFC tax policy of accountability is not met since TRD is not required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose.

#### **ADMINISTRATIVE IMPLICATIONS:**

Per DFA, the bill will require the SBOF to amend its rule governing the dedication of State gross receipts tax increment (2.61.3 NMAC) to establish procedures and submission requirements for approval to rebase a TIDD. Amending the rule will cost roughly \$0.5 thousand.

It is also estimated that the SBOF will receive at least one request for approval to rebase a TIDD. The SBOF will likely require the TIDD to submit a full application in compliance with 2.61.3 NMAC for its consideration to be able to make the finding that rebasing the TIDD is in the best interest of the State. Analysis of TIDD applications is typically quite complex and will require an estimated 40 hours of staff time between the SBOF's staff and the DFA's economic analysis unit.

The approval of the original Winrock I and II and the Quorum projects analysis consumed over 120 man hours of DFA economic analysis unit effort, plus additional time for the SBoF staff. It should also be noted that since the SBOF approvals of the three aforementioned TIDDs, the SBOF has published regulations on information required from a developer in order to apply for SBOF approval. In general, this required information is substantially more voluminous than previously required.

**TRD reports a low impact from the provisions of this bill.** The Taxation and Revenue Department currently has the capability to adjust the TIDD baseline in the GenTax system.

The LFC is also required to study and recommend to the legislature whether a TIDD should be approved and if the legislature should impose additional requirements or limitations over and above the requirements imposed by the Board of Finance.

## **OTHER SUBSTANTIVE ISSUES**

NMFA describes the process it undertakes in processing a TIDD application. “Prior to recommending that the Legislature authorize the TID District to issue bonds against the State GRT, the NMFA Board reviewed the finance plan and the analysis. NMFA’s “approval” and recommendation was conditioned upon the District presenting a final bond indenture for approval by the NMFA Board prior to issuing bonds. With this condition in place, we do not anticipate presenting this to our board unless the analysis and finance plan have changed substantively since its initial application. For instance, if Winrock anticipates going from self-purchased bonds to publicly sold bonds or if the projected debt service coverage shows a material decline. Our particular concern in reviewing the indenture is ensuring that potential bond purchasers are sophisticated investors and not naïve investors who might confuse these bonds with general obligation bonds issued by the State.”

## **SECTION BY SECTION SUMMARY**

Provided by DFA

Section 1 of the bill creates a mechanism for a TIDD board to adopt a resolution announcing the TIDD board's concurrence in re-establishing the TIDD base year from which incremental tax revenue dedicated to the TIDD is calculated. This section also provides for a written comment period by the Taxation and Revenue Department, the Department of Finance and Administration, and the governing bodies in which the TIDD is located. Written comments received by the TIDD board must be sent to the State Board of Finance (SBOF).

Section 2 of the bill provides that the SBOF may approve rebasing the TIDD 1) once in the life of the TIDD project; 2) to a completed calendar year only; 3) only if no bonds have been sold or are outstanding; (4) if there is no unresolved objection to the revision by the developer or by a local government that has dedicated a tax increment to the district, and 4) if the SBOF finds that

approving the rebasing is reasonable and "in the best interest of the State."

Section 3 of the bill provides that if the SBOF approves the rebasing of a TIDD, the TIDD shall return any gross receipts tax increments distributed to the TIDD between the original approval of the TIDD and the end of the revised base year. The TIDD will also be required to update its TIDD plan to reflect the revision, and file the updated TIDD plan with the clerk of the governing body that formed the TIDD.

### **TECHNICAL ISSUES**

Section 3 of the bill provides that if the SBOF approves the rebasing of a TIDD that the TIDD will be required to return any gross receipts tax increment attributable to the TIDD from its inception through the end of the revised base year. There is no time period established for this return, nor is there any provision for making up for valid costs incurred by the TIDD board over the years from inception to the end of the revised base year. It may be appropriate to use language developed for reversion of state general fund, "return any unexpended or unencumbered gross receipts tax increment distributed to the district and credited to the period between the time that the revenue collection began and the end of the revised base year."

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