De Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

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

		LAST UPDATED	2/4/23
SPONSOR	Serrato/Small/Ortez	**ORIGINAL DATE**	2/3/23
SHORT TITLE	Improvement Special Assessment Act	**BILL NUMBER**	House Bill 228
		ANALYST	Graeser

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25	FY26	FY27		
	Indeterminate but minimally positive	Indeterminate but minimally positive	Indeterminate but minimally positive	Indeterminate but minimally positive	Recurring	Sponsoring Counties/Municipalities

Parenthesis ( ) indicate revenue decreases.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
$100.0			$100.0	Nonrecurring	
	>$200.0	>$200.0	>$400.0	Recurring	County Assessors and Treasurers

Parenthesis ( ) indicate expenditure decreases.

Relates to Senate Bills 251 and 303

Sources of Information

LFC Files

Responses Received From
Economic Development Department (EDD)
Energy, Minerals and Natural Resources Department (EMNRD)

SUMMARY

Synopsis of House Bill 228

House Bill 228 proposes a new financing mechanism to encourage improvements that improve resilience, energy efficiency, or water conservation projects on existing properties. For new developments, eligible improvements will enable the property to exceed the energy efficiency, water conservation, renewable energy, renewable water, or resilience requirements of the applicable building code.

An eligible property is a privately owned commercial, industrial, agricultural, or multifamily residential real property with five or more dwelling units or mortgage used to construct the

improvements. To establish this improvement special assessment program, a board of county commissioners would enact an ordinance establishing a program in which improvement loans would be repaid by special assessments on eligible property benefitting from those financed improvements. The funds to be used to install the improvements would be provided by private interests and would bear appropriate interest. The loans would be repaid by special property tax levies imposed on the participating property owners. These payments would be administered by the sponsoring county treasurer. The special levies would be paid both at the same time and in the same manner as property tax assessments or in separate billings.

HB228 includes the following provisions:

- Assigns to EDD the responsibility of developing and promulgating a "program guidebook" to provide a detailed explanation of the requirements of the act;
- Provides rules and authorities for the hierarchy of liens in case of default;
- Allows county treasurers to collect the annual lien payments as part of the regular property tax billing or a special annual billing; and
- Allows the sponsoring county or other jurisdiction an administrative fee not to exceed the lesser of 1 percent or $25 thousand.

This bill does not contain an effective date and as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed. EDD is required to prepare the program guidebook within 90 days of enactment.

FISCAL IMPLICATIONS

The bill's provisions do not constitute a tax expenditure. Depending on uptake, sponsoring jurisdictions would receive a minimal amount of revenue to compensate for the administration of the special district lien and distribution of collected revenue.

EDD notes a significant unfunded mandate related to the preparation of the required program guidebook. This guidebook will have to be created within 90 days of the effective date of the bill, irrespective of whether any jurisdictions elect to form one of the improvement special districts. (See "Administrative Implications" for discussion.)

SIGNIFICANT ISSUES

EMNRD reports:

> For EMNRD, HB 228 primarily relates to financing tools that help pay for clean energy and energy efficiency projects. EMNRD sees HB 228 as an improvement on, and perhaps an alternative solution to, the current Commercial Property Assessed Clean Energy (C-PACE) statutes operative in New Mexico. C-PACE uses borrowed capital to pay for the upfront costs associated with energy efficiency or renewable energy improvements. Unlike other project financing, the borrowed capital is repaid over time via a voluntary tax assessment. HB 228 sets up a similar structure.
>
> In New Mexico, C-PACE is currently enabled through both the Renewable Energy Financing District Act passed in 2009 (Sections 5-18-1 to 5-18-13 NMSA 1978), and new sections of the Public Improvement District Act also passed in 2009. Both laws facilitate the imposition of special assessment to secure financing for clean energy

improvements, but do not function in conjunction with one another and appear to create separate pathways for a transaction to occur. Additionally, those existing laws may only be used to finance a limited category of renewable energy, and neither consider energy efficiency, water conservation, or other building improvements as eligible project types. They lack a requirement for lender consent and clear procedures for collection and enforcement. The market considers these statutes functionally unworkable.

The Economic Development Department (EDD) received an appropriation in the 2021 legislative session to assess the existing C-PACE program in New Mexico and determine what actions would be necessary to make it functional and ease implementation if new legislation should pass in the future. As a result of that effort, EDD made several recommendations, many of which are addressed by HB 228.

The following recommendations are addressed by HB 228:

1. expand eligible improvements to include energy efficiency, water conservation and resiliency and authorize C-PACE financing to be used for new construction and retrofits of existing buildings;
2. specify a direct lending model;
3. articulate the role of local governments;
4. articulate options for program administration structure;
5. classify C-PACE special assessments, which includes a) specifying that C-PACE special assessments must be imposed *by a local government* as an assessment and not a tax. County improvement districts (§ 4-55A NMSA), which are billed, collected, and enforced at the local level and do not roll up to the state, are a better model for C-PACE in New Mexico; b) making C-PACE special assessments junior to *ad valorem* property taxes. In the structure described above, it is important to bifurcate lien priority of *ad valorem* taxes from C-PACE special assessments to allow for the seamless execution of a differing enforcement procedure by third parties, which may take place prior to the foreclosure of a property tax lien; and c) explicitly stating that future C-PACE assessment payments not yet due are not accelerated nor extinguished upon the transfer or foreclosure of a property;
6. require lender consent; and
7. establish minimum uniformity standards for C-PACE application procedures.

One recommendation from EDD that is not implemented by HB 288 is repeal of the existing laws from 2009. The intent behind such appeal is to avoid any confusion.

HB228 is similar to the special assessment for public improvement districts (PID). PIDs usually involve installing electric, water, or sewer lines for the use of a number of private properties. The voluntary special PID assessment is collected by the county treasurer with regular semi-annual property tax payments and then these special assessments are used to make periodic payments to the providers of capital used to build the public improvements. One critical point with PIDs is that all of the properties fronting the public improvements benefit and pay the assessments, whereas only specific properties would benefit from the provisions and would bear the entire burden of the assessment.

The HB228 improvement special district proposal, differs significantly from the conventional

PID. Section 3 (A) of the bill states:

> The county ordinance shall … include a statement that the financing of eligible improvements, repaid by special assessments on eligible property benefited by such improvements is in the interest of public health, safety and welfare.

This defines energy and water conservation and resiliency projects on private properties as public benefits. However, despite this, the real benefits from the proposal are restricted to the private properties where the energy efficiency, water conservation, or resiliency projects are installed. In the case of a PID, a supermajority of the property owners must approve the voluntary assessments allocated among the various property owners. This proposal allows a county to designate an improvement special district without a vote of the affected property owners, so that only "eligible properties" will benefit and voluntarily agree to pay the special assessment.

Two other features of the proposal may be relevant:

1. In Section 5(D) "… a special assessment lien runs with the land…". A developer could apply for an improvement special assessment for a single parcel, build the eligible improvements, and sell the property with the lien in place. Subsequent owners of the property would be obliged to pay the special assessment until the loan were repaid.
2. In Section 2 (F), "'eligible property' means any privately owned commercial, industrial, agricultural or multifamily residential real property with five or more dwelling units, including real property owned by an entity formally recognized as tax exempt …". Federally tax exempt properties (i.e., 501(c)(3), 501(c)(4), or 501(c)(6)) properties are generally property tax exempt if their activities are educational or charitable. However, these properties are not exempt from the special assessments proposed in this bill.

Previous proposals to use property tax administration as a financing tool failed because of a hierarchy of lien issue or an issue in case of default of conventional mortgage loan, a tax lien, or the special assessment lien. Because the special assessment lien would only cover a portion of the capital required for most projects, the capital provider would be interested in this hierarchy. Section 5, Paragraphs C and D provide:

> A special assessment lien shall be effective during the period in which the special assessment is imposed and shall have priority superior to all liens, claims and titles except a lien for general ad valorem property taxes or an improvement district lien that is coequal to property taxes. D. A special assessment lien runs with the land, and that portion of the special assessment lien that has not yet become due is not accelerated or eliminated by foreclosure of the special assessment lien or any lien for taxes or assessments imposed by the state, a local government or taxing district against the property on which the special assessment lien is imposed.

This special assessment lien may be superior to mortgage liens. In case of a default and foreclosure of the mortgage loan, the bank or other capital provider would be obliged to pay the assessment and any subsequent owner of the underlying property including the eligible improvements would also be obliged to continue the payments. This would be a good deal for the capital provider for the eligible improvements and a bad deal for the bank carrying the loan.

ADMINISTRATIVE IMPLICATIONS

This bill creates an unfunded mandate for EDD that it would not be able to fulfill without $200

thousand recurring funding for FTE and $100 thousand nonrecurring funding to create the guidebook.

Under the bill, EDD will be required to create and distribute a program guidebook within 90 days of the bill's enactment. Additionally, EDD may need to be the project administrator for the program. EDD reports staff's workload is already overloaded with office space at capacity. As such, EDD would require additional full-time employees (FTE) to effectively complete the scope of work within this bill. An estimated minimum of 2 FTE would be required to effectively maintain and promote this program, with that number to potentially increase over time based on program growth rate. The need of additional office space would further increase the operating budget. The minimum estimated operating budget needed would be $200,000) per year without the cost of office space included. Furthermore, the 90-day turn around required to create and make available the program guidebook may be too short as EDD states it would need to bring on additional employees and office space.

Aside from the administrative burden facing EDD, county assessors and treasurers could bear significant administrative burdens from this bill.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB303 proposes changes in governance of PIDs and TIDDs; SB251 proposes a significant conversion of Metropolitan Redevelopment Act provisions to add state and local gross receipts taxes to the incremental taxes diverted to servicing MRA bonds.

LG/al/mg