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FISCAL IMPACT REPORT

ORIGINAL DATE 1/26/05
 LAST UPDATED 2/2/06

SPONSOR Rawson, L. HB _____

SHORT TITLE Regional Spaceport District Act SB 348a/SFC

ANALYST Earnest

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY06	FY07	FY08	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		(\$0.1)	(\$0.1)	(\$0.1)	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to: House Bill 88, House Bill 89, and Senate Bill 354
 Companion to: House Bill 473

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Economic Development Department (EDD)
- State Land Office (SLO)
- New Mexico Finance Authority (NMFA)
- Tourism Department (TD)
- Office of the Attorney General (AGO)
- Department of Finance and Administration (DFA)
- Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Senate Finance Committee Amendment

The Senate Finance Committee amendment makes technical corrections and two substantial changes. Under the amendment, the revenues of a district are no longer exempt from state taxation and Spaceport Authority revenue bonds may mature any time not exceeding 20 years after issuance if secured by revenue from the county or municipal regional spaceport gross receipts tax or 30 years if secured by revenue from other sources.

Synopsis of Bill

Senate Bill 348 amends the Spaceport Development Act to:

1. permit the creation of Regional Spaceport Districts and define the powers and duties of the districts, provide for the powers and responsibilities of the board of directors, and provide for county and municipal regional spaceport gross receipts taxes;
2. authorize municipalities and counties to impose, upon voter approval, a regional spaceport gross receipts tax, in increments of one-sixteenth percent, not to exceed one-half percent; and
3. allow the Spaceport Authority to contract with and issue bonds on behalf of regional spaceport districts and receive municipal and county regional spaceport gross receipts taxes.

FISCAL IMPLICATIONS

The revenue impact to the state is indeterminate. According to TRD, the actual fiscal impact of the proposal is uncertain because it depends on which jurisdictions elect to participate in a spaceport district. The revenue potential associated with each jurisdiction is presented in the attached table.

There would be a reduction in general fund revenue associated with any new local option approved for the spaceport district because of the hold harmless distributions to local governments for any food and medical deduction reported in their jurisdiction. On average statewide, these deductions equal about 7 percent of the gross receipts tax base

According to the AGO, SB 348 imposes a duty on the Attorney General to investigate and prosecute violations of a certain provision of the Regional Spaceport District Act relating to conflicts of interests by members of a district's board of directors. This duty may have a fiscal impact on that portion of this office's budget dedicated to investigating and prosecuting violations of the Governmental Conduct Act (NMSA 1978, §§ 10-16-1 through 10-16-18), although the amount of any impact is difficult to calculate

SIGNIFICANT ISSUES

SB 348 is one of several introduced bills to further enable and promote the creation a spaceport in southern New Mexico. Construction of the Southwest Regional Spaceport, currently planned to be built on 27 acres of mostly state land near Upham, New Mexico, is estimated to cost \$225 million. The Governor has requested approximately \$100 million in capital outlay funding.

This legislation would authorize the other major funding mechanism – the imposition of local option gross receipts taxes – which according to DFA, may generate new revenue in the range of \$26 million (at the 1/16 percent increment) to \$210 million (at the full 1/2 percent increment). At least 75 percent of the new revenue would be dedicated to financing, planning, designing, engineering, and construction of a regional spaceport. Up to 25 percent of the revenue may be retained by the local government for local spaceport-related projects. EDD indicates that \$30 million is a reasonably conservative estimate of local government funding for spaceport construction.

Regional spaceport districts may be created by contract by two or more governmental units (the state, a county or municipality, or an Indian nation, tribe or pueblo) and are to be governed by a board composed of representatives of district members. The regional spaceport districts would be political subdivisions of the state. Any city or county can join the district if it imposes a regional spaceport gross receipts tax.

PERFORMANCE IMPLICATIONS

There are no performance measures to gauge the activities of the Spaceport Authority.

ADMINISTRATIVE IMPLICATIONS

SB348 will impose additional responsibility on the Spaceport Authority. The bill enables the Spaceport Authority to enter into contracts with spaceport districts for the purpose of financing the purchase, construction, renovation, equipping or furnishing of a regional spaceport. Under this legislation the Authority may also receive municipal and county gross receipts tax revenues.

Under separate legislation, EDD has requested the transfer of personnel and resources from the Office of Space at EDD to the Spaceport Authority, which is administratively attached to the department.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to:

- House Bill 88, “Expenditure of Spaceport Development Funds”
- House Bill 89, “Abolish Space Commission and Transfer Funds
- Senate Bill 354, “Spaceport Development Fund”

Companion to:

- House Bill 473, “Regional Spaceport District Act”

OTHER SUBSTANTIVE ISSUES

According to the AGO, section 5.E of SB 348, relating to the conflict of interests of a director or employee of a regional spaceport district board, does not exempt the officers or employees from the Governmental Conduct Act (NMSA 1978, §§ 10-16-1 through 10-16-18). It also duplicates only certain provisions of the Governmental Conduct Act, i.e.:

- a public officer shall disqualify himself from engaging in any official act directly affecting his financial interest (NMSA 1978, § 10-16-4),

- no legislator, public officer or employee shall use confidential information acquired by virtue of his state employment or office for his or another's private gain (NMSA 1978, § 10-16-6), and
- a state agency shall not enter into any contract with a public officer or employee of the state or with a business in which the public officer or employee has a substantial interest unless the public officer or employee has disclosed his substantial interest and unless the contract is awarded pursuant to the Procurement Code (NMSA 1978, § 10-16-7).

More problematic is that Section 5.E of SB 348 not only prohibits a director of a regional spaceport district board from voting on an issue when the director has a conflict of interest, consistent with NMSA 1978, § 10-16-4 of the Governmental Conduct Act, but also prohibits a director, officer, or employee of a regional spaceport district board from acquiring a financial interest in a new or existing business venture of any kind when the person believes or has reason to believe the financial interest will be directly affected by an official act of that director, officer or employee. This particular clause may be too broad and viewed as a form of prior restraint on an individual's property interests.

Even though the Attorney General is charged with investigating and prosecuting violations of Section 5.E, it does not carry a civil or criminal penalty. The Governmental Conduct Act authorizes the Attorney General or District Attorney to initiate enforcement action for violations of that Act, but under Section 5.F of SB 348, only the Attorney General may initiate actions for violations of Section 5.E. This raises the question whether the Legislature intends that a director, officer, or employee of a regional spaceport district board may be subject to prosecution under both the Governmental Conduct Act and Section 5.E for the same violation.

TECHNICAL ISSUES

TRD indicates that, in most cases, local option tax statutes stipulate that any new option would take effect on a January 1 or July 1 so that these changes can be incorporated into the regular CRS system mailings and workshops. The term "district" should be more strictly defined. The term "district" is a "body politic and corporate" but it is also being used when discussing land mass, property and territory. Section 5, Subsection D (page 6) provides that each governmental unit shall have a board member and that such director shall be an "elected official or *his designee*." But Section 5, subsection B (page 6) provides that only an "elected official" may vote on land acquisition or bonding issues. It is unclear what would happen to the assets of the district if the district would dissolve at the end of the contract.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If SB 348 is not enacted, a significant element of the funding package for the spaceport project will not materialize. If local funding is not available, the funding of this project will be in jeopardy and other financial resources will have to be identified.