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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/26/10  
 SPONSOR Lujan, B LAST UPDATED 1/27/10 HB 162  
 SHORT TITLE Severance Bonds for Tribal Infrastructure SB \_\_\_\_\_  
 ANALYST White

### APPROPRIATION (dollars in thousands)

Appropriation			Recurring or Non-Rec	Fund Affected
FY10	FY11	FY12		
\$0.0	\$0.0	(\$10,750.0)	Recurring	Severance Tax Bonding Fund
\$0.0	\$0.0	\$10,750.0	Recurring	Tribal Infrastructure Project Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>	\$0.0	\$0.0	\$0.1	\$0.1	Recurring	Board of Finance Operating Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
 Indian Affairs Department (IAD)

### SUMMARY

#### Synopsis of Bill

House Bill 162 amends the severance tax bonding act in order to appropriate 5 percent of annual severance tax bonding (STB) capacity for tribal infrastructure projects as certified by the tribal infrastructure board. The effective date of the proposed legislation is July 1, 2011.

**FISCAL IMPLICATIONS**

Because of the delayed effective date of the proposed legislation, STB capacity would not be affected under House Bill 162 until FY12. Based upon the December consensus revenue forecast, total senior STB capacity is anticipated to be \$215 million in FY12. After an existing 10 percent statutory allocation to the Water Project Fund, remaining capacity is estimated to be approximately \$193.5 million. House Bill 162 proposes an additional recurring allocation of 5 percent. As a result, approximately \$10.75 million will be appropriated to the Tribal Infrastructure Fund and FY12 net senior capacity would decrease to approximately \$182.75 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.

<b>LFC FORECAST OF CAPITAL OUTLAY AVAILABLE</b>	
<i>Severance Tax Bonding</i>	
	<b>FY12</b>
Senior Long-Term Issuance	149.5
Senior Sponge Issuance	65.5
<b>Senior STB Capacity - December 2009 Estimate</b>	<b>215.0</b>
<i>Water Project Fund (Statutory 10% of STB)</i>	<i>(21.5)</i>
<i>Proposed Tribal Infrastructure Allocation (5% of STB)</i>	<i>(10.8)</i>
<b>Net Senior STB CAPACITY</b>	<b>182.8</b>
<i>Supplemental Long-Term Issuance</i>	-
<i>Supplemental Sponge Issuance</i>	146.3
<b>Supplemental STB CAPACITY</b>	<b>146.3</b>

This bill 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.

House Bill 162 requires DFA to “monitor and ensure proper reversions of the bond proceeds appropriated for tribal infrastructure projects.” Furthermore the State Board of Finance (BOF) will be charged with ensuring that in most cases the projects being certified by the Tribal Infrastructure Board comply with federal tax-exempt regulations. These activities will most likely take up a small amount of additional agency resources and thus may have an unknown but material impact on the BOF operating fund.

**SIGNIFICANT ISSUES**

**Tribal Infrastructure Fund.** Laws of 2005, Chapter 146 - the Tribal Infrastructure Act - created the Tribal Infrastructure Project Fund. The fund was created to provide tribal communities with financial assistance in addressing basic infrastructure needs. The Tribal Infrastructure Project Fund is a non-reverting fund administered by the Department of Finance and Administration (DFA). Additionally, the unexpended balances of capital outlay appropriations made after January 1, 2007 from the general fund to the Indian Affairs Department or to the Aging and Long-term Services Department for projects located on lands of

an Indian nation, tribe or pueblo shall revert to the project fund. Allotments made from the fund are determined by a board consisting of members of executive agencies and tribal entities.

Due to the large amount of money being allocated under the proposed legislation it may be prudent to add additional legislative oversight to the program through legislative representation to the Tribal Infrastructure Board. Currently, legislative oversight is handled through the interim Indian Affairs Committee.

Indian Affairs Department (IAD):

“Additionally, every year, no later than October 1, the Tribal Infrastructure Fund (TIF) Board and the IAD are required to report the grant proposals submitted to the TIF Board to the legislative Interim Indian Affairs Committee. The legislative Interim Indian Affairs Committee provides review and advice on such proposed projects. The TIF Board and IAD staff regularly report to the Interim Indian Affairs Committee information such as project status or balances, and also will address any areas of concern.

Other capital expenditure boards, most notably PSCOC, have either legislative members or legislatively appointed members. Currently the Tribal Infrastructure Board is made up entirely of executive, federal, and tribal representatives.

### **OTHER SUBSTANTIVE ISSUES**

Indian Affairs Department (IAD):

“Tribal leaders have consistently expressed that creating a permanent funding source for the TIF is a top tribal priority. The TIF, as it currently exists, cannot fulfill its original statutory intent to provide “consistent and adequate financial resources for infrastructure development for tribal communities” because it is dependent on the annual discretion of the Legislature and the governor to appropriate funding for distribution by the TIF Board. The recurring appropriation would allow a comprehensive strategy to address the daunting tribal infrastructure needs in New Mexico and result in increased leveraging of other funds. It would create a reliable and viable long-term source of funding for tribal infrastructure. This permanent funding would allow for the TIF funds to be evaluated and allocated earlier in the calendar year to best take advantage of the funding cycles of other federal and government funding, thus increasing the potential for leverage.”

### **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 Tribal Infrastructure Board. The legislature will still have the ability to make annual appropriations of STB proceeds for tribal infrastructure projects at its discretion. Net senior STB capacity to be appropriated by the legislature will remain at \$193.5 million for FY12.

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