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

**SPONSOR** Gardner | **ORIGINAL DATE** 2/05/10 | **LAST UPDATED** | **HB** 254

**SHORT TITLE** No Severance Bond Projects In Some Counties | **SB**

**ANALYST** Pava

## APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Non-Rec | Fund Affected |
|---|---|---|---|
| FY10 | FY11 | | |
| | NFI | Recurring | General Fund |

(Parenthesis ( ) Indicate Expenditure Decreases)

**SOURCES OF INFORMATION**
LFC Files

Responses Received From
Dept. of Finance & Administration (DFA)

**SUMMARY**

Synopsis of Bill

House Bill 254 proposes to enact a new section of the Severance Tax Bonding Act to prohibit the issuance of severance tax bonds to benefit projects located in counties or municipalities that have enacted ordinances that have an “onerous effect” upon extractive industries. State projects located in such municipalities or counties are not included in the prohibition.

**FISCAL IMPLICATIONS**

There is no appropriation within HB 254.

**SIGNIFICANT ISSUES**

HB 254 would have a significant impact on the funding of vital capital projects in those municipalities and counties whose ordinances are construed as having an onerous effect on extractive industries. Some municipalities and counties may have unique, very compelling reasons for such ordinances due to serious past pollution, probability of complications and associated costs, fragile terrain, vulnerable populations, etc. However, HB 254 will penalize all the same regardless of their distinct circumstances and severity of risk associated with some ordinances deemed burdensome.

The New Mexico Municipal League is concerned that the funding capabilities for the counties and municipalities would be adversely affected and could result in significantly restricting reliable funding resources. This bill will also affect certain Local Tribal Government Agencies by limiting the availability of future severance tax funding for projects within targeted counties. Santa Fe County is opposed to this bill since they have enacted oil and gas ordinance that could be later deemed onerous and result in prohibiting severance tax bond proceeds for needed capital projects.

**EMNRD notes**: HB 254 does not define what is meant by an "onerous effect" on extractive industries and does not designate whose responsibility it is to determine whether a municipality or county's ordinances reach the threshold established by the bill and exclude those jurisdictions from the benefits of severance tax funding. Pursuant to NMSA 1978, §7-27-10, the State Board of Finance is authorized and responsible for the issuance of severance bonds. Therefore, the determination may fall to the State Board of Finance to review ordinances and make the determination.

HB 254 does not provide for a process to determine what constitutes an "onerous effect." The bill does not indicate whether the impacts of local ordinances should be made in a cumulative fashion or on an ordinance-by-ordinance basis. For instance, if a project is located in county or municipality that has a number of "zoning or other ordinances" that have been determined to have an impact on the cost of doing business for the "extractive industries," is the determination to be made by looking at each separate ordinance, *individually*, and then making a determination as to each *separately* regarding whether it has the requisite impact on cost of operations? Or, is the determination to be made by looking at the collective, cumulative effect of all such identified ordinances, and then determining if they *cumulatively* have the requisite impact on cost of operations?

The language also does not indicate whether it is intended to include general-application ordinances, or to only encompass those ordinances that are specifically directed to the "extraction industries." For example, a county might have a noise ordinance that applies to everyone.

**NMDOT notes**: SB 8 affects the NMDOT more than other agencies whose projects are funded from other sources of revenue. Future NMDOT projects could be seriously affected since they are funded from severance tax bond sales. This may be detrimental to projects within targeted counties and municipalities, which are yet unidentified, for the remaining GRIP 2 and Maintenance Projects appropriated in HB 2 , Laws of 2007 (1st S.S.), and $75 million for HB 10, Laws of 2008 (1st S.S.).

The Governor and the Legislature ended a Special Session on October 23, 2009 where laws were passed as part of the State of New Mexico Solvency Plan. HB 17, as amended, was part of the solvency bills. It mandated that the Legislative Council Service, the Legislative Finance Committee and the DFA identify a minimum of $150 million of voidable capital outlay projects. NMDOT is to apply to DFA for an exception so particular capital outlay projects can move forward. If SB 8 is enacted, NMDOT will be unable to plan its 2010 budget and subsequent years until a wide-reaching and time consuming survey of all capital outlay projects is carried out to determine which would be barred by this legislation.

## PERFORMANCE IMPLICATIONS

**NMED notes:** Its performance of statutory mandates will be affected by HB 254. An evaluation of all ordinances one at a time would be needed to determine if it has any relation to the drilling or operating of an oil and gas well, or the permit or operation of a mining activity. Economic analysis would need to identify the costs of each applicable ordinance, but there is a lack of an appropriation for specialized experts.

**EMNR notes:** The burden for determining what data is necessary and gathering it is placed on state agencies, not on the operators who are keepers of the data. No state agency routinely gathers or evaluates the type of economic data needed to assess operating costs. EMNRD is not staffed with economists to advise extractive industry commissions and provide testimony about the costs of various ordinances.

## ADMINISTRATIVE IMPLICATIONS

NMSA 1978, §7-27-10 specifies the State Board of Finance is authorized for the issuance of severance bonds. However, HB 254 is incomplete and does not indicate who or how economic analysis is to determine onerous costs, nor the method to collect data from operators, and access and evaluate ordinances across the state. There is no process of notification for the legislators of the affected municipalities and counties and no due process for review and appeal of onerous determinations and prohibition of bond financing.

**NMDOT notes:** Projects may be delayed while all interested parties go through the process of evaluating the impact that ordinances have on these industries in certain counties and municipalities.

## COMPANIONSHIP & DUPLICATION

HB 254 relates to SB8, but it’s shorter and does not have the additional verbiage “to be located within the planning and platting jurisdiction” and sections concerning hearings by three industry oversight commissions. It excludes state projects from the prohibition when SB 8 does not.

## WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If severance tax bonds cannot be used to fund these projects, the affected local entities will need to seek alternate sources such as the state general fund, which could be less available. Severance tax bond proceeds will continue to be appropriated to all counties and municipalities without determination as to whether there are local ordinances that have an onerous effect upon various extractive industries.

CP/mt:mew