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FISCAL IMPACT REPORT

ORIGINAL DATE 02/08/10

SPONSOR Lovejoy LAST UPDATED _____ HB _____

SHORT TITLE Tribal Capital Project Purpose Changes SB 251

ANALYST Burns

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	NFI*		

(Parenthesis () Indicate Expenditure Decreases)

*See Fiscal Impact

Conflicts with Senate Bill 182 Capital Outlay Reversions for Solvency

SOURCES OF INFORMATION

LFC Files

Responses Received From

Indian Affairs Department (IAD)

Department of Health (DOH)

SUMMARY

Synopsis of Bill

Senate Bill 251 amends portions of the Tribal Infrastructure Act, Chapter 6, Article 29 NMSA 1978. The amendments seek to provide a mechanism for expeditious expenditure of capital outlay funds appropriated for projects in tribal communities and enhanced oversight of the process to ensure expenditure of capital outlay funds by tribes or their agencies or subdivisions. Senate Bill 251 further amends the act by inserting additional duties required to be performed by the Tribal Infrastructure Board.

Senate Bill 251 also takes unexpended balances of appropriations made before January 1, 2010 for capital outlay projects in tribal communities that are not encumbered by third-party contracts or other legally binding obligations and reauthorizes and appropriates the funds to the tribal infrastructure board to be administered pursuant to the Tribal Infrastructure Act.

FISCAL IMPLICATIONS

SB 251 would change reauthorize all the unexpended balances for projects authorized in previous legislative sessions that were appropriated for projects on tribal land. The total amount that would be reauthorized is not determined at this time. There would be a great deal of administrative work that would be required to determine the amount that would be reauthorized.

SIGNIFICANT ISSUES

The amendments contained in the bill would reauthorize the balances of capital projects located on tribal land to be administered by the Tribal Infrastructure Board. The projects reauthorized would be removed from an agency with expertise related to the specific project. The Tribal infrastructure board would become responsible for oversight of projects outside of their specific fields of expertise. The reauthorization of these projects would remove them from their administering agency that has specific information on the projects and expertise in the field that the project was authorized.

ADMINISTRATIVE IMPLICATIONS

The reauthorization of all projects on tribal lands could cause serious administrative implications to all agencies currently administering the projects and particularly for IAD. Each agency currently administering tribal capital outlay projects would have to close out each appropriation and transfer the funding to the Tribal Infrastructure Board. Once all the appropriations were closed out the reauthorizations would then have to have each budget reestablished by the Tribal Infrastructure Board. Once budgeted, the board would have to initiate new grant agreements or joint powers agreements in order for the tribal entity to receive the funding. This task would likely require IAD to perform the tasks necessary. There is concern that IAD lacks the staff to administer such a large project.

The canceling and initiation of agreements with tribal entities can often be a very time consuming process. The time taken to put all the agreements into place could seriously slow the progress of a project that is currently under way.

CONFLICT

SB 251 conflicts with SB 182 Capital Outlay Reversions for Solvency. If SB 251 became affective prior to SB 182, the tribal projects contained in SB 182 would not revert as intended. This could have a negative impact on the state's reserve levels if both bills were to pass.

TECHNICAL ISSUES

Section 6, Subsection B, reads “Notwithstanding any other law to the contrary, the unexpended balances of appropriations made before January 1, 2010 for capital outlay projects in tribal communities that are not encumbered by third-party contracts or other legally binding obligations are reauthorized and appropriated to the tribal infrastructure board to be administered pursuant to the Tribal Infrastructure Act.”

Funding can not be appropriated to the Tribal Infrastructure Board; the funding could be reauthorized to the Tribal Infrastructure Project Fund or to the Tribal Infrastructure Trust. If the

funding was reauthorized to one of these sources it would fall under the oversight of the tribal infrastructure board.

OTHER SUBSTANTIVE ISSUES

The Tribal Infrastructure Board is made up of nine voting members and four non-voting members. The members come from the following:

The voting ex-officio members are:

1. the Secretary of Indian affairs, or the secretary's designee from the department, who shall be chair of the board;
2. the Secretary of Finance and Administration or the secretary's designee from the Department of Finance and Administration;
3. the Secretary of Health or the secretary's designee from the Department of Health;
4. the Secretary of Environment or the secretary's designee from the Department of Environment; and
5. the Executive Director of the New Mexico Finance Authority or the executive director's designee from the New Mexico Finance Authority.

The following four voting members who have experience with capital projects development or administration from tribes shall be appointed by the governor:

1. one person who is a member of a pueblo;
2. one person who is a member of the Jicarilla Apache Nation;
3. one person who is a member of the Mescalero Apache Tribe; and
4. one person who is a member of the Navajo Nation.

There shall be four non-voting members as follows:

1. one representative from the federal bureau of Indian affairs, Albuquerque area office, designated by the regional director;
2. one representative from the federal bureau of Indian affairs Navajo area office designated by the regional director;
3. one representative from the Albuquerque area Indian health services designated by the area director; and
4. one representative from the Navajo area Indian health services designated by the area director.

ALTERNATIVES

Funding could remain with the agencies currently administering the funding and measures at individual agencies could be taken to improve the oversight and completion of tribal capital outlay projects.

KJB/mew