

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

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR	Munoz	ORIGINAL DATE	01/26/11	HB	
		LAST UPDATED	01/31/11	SB	
SHORT TITLE	Fiscal Agent for Navajo Chapter Projects			SB	238
		ANALYST	Hanika-Ortiz		

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Indian Affairs Department (IAD)
Office of the Attorney General (AGO)

SUMMARY

Synopsis of Bill

Senate Bill 238 amends Section 6-28-2 NMSA 1978 to recognize certain nonprofit entities as local sub-governing tribal entities that have the capability and capacity to act as a fiscal agent for capital improvement projects.

The bill would require that nonprofit entities be: 1) organized under the supervision of tribal governments; 2) registered with the public regulation commission; and 3) whose mission or objective is to provide education and basic services.

FISCAL IMPLICATIONS

The state may contract through a fiscal agent other than the Navajo Nation for the expenditure of state funds on behalf of local sub-governing tribal entities of the Navajo Nation, as long as that fiscal agent is a government entity. The New Mexico Constitution may preclude the State from recognizing non-profits as fiscal agents for this purpose.

Unless otherwise negotiated, an administrative fee of no more than five percent of a project's cost may be charged by the entity that serves as fiscal agent. However, it is not unheard of for the local government acting as fiscal agent to not charge a fee for this service.

SIGNIFICANT ISSUES

IAD states that the bill does not clarify the distinction between certified (LGA) chapters and non-certified (non-LGA) chapters whereas SB 224 limits the ability of local county governments acting as fiscal agents for chapters certified by the Navajo Nation pursuant to the Navajo Nation Local Government Act (LGA) codified under Title 26 of the Navajo Nation Code. This may create the presumption that all chapters of the Navajo Nation are recognized as local sub-governing tribal entities and further raises the question as to which entity, tribal or non-tribal, will determine that a chapter has the capability and capacity to apply for and implement capital improvement projects.

IAD notes that under Navajo Nation law non-LGA chapters do not have explicit authority to implement capital improvement projects. The only entities under Navajo Nation law that have explicit authority to do procurement for public facilities are Design and Engineering Services and LGA-certified chapters, that have their own procurement policies.

PERFORMANCE IMPLICATIONS

Recognizing non-profit entities as local sub-governing tribal entities under tribal supervision may violate Article IX, Sec. 14 of the New Mexico Constitution (the “Anti-donation Clause”).

ADMINISTRATIVE IMPLICATIONS

If a non-profit entity is an entity of the Navajo Nation government, then it is likely bound by the Navajo Nation Procurement Code and may not have the authority to engage in procurement if the capital improvement project is a public facility. The Navajo Nation may have to amend its procurement code and other laws to provide for fiscal agents to be used to do capital projects for either the Navajo Nation chapters or for nonprofit entities of the Navajo Nation.

OTHER SUBSTANTIVE ISSUES

The Local Economic Development Act is a current exception to the Anti-donation Clause. Under that Act, any subsidies proposed by municipalities or counties must be adopted by a series of ordinances. This means that the public is given notice of the proposed subsidy, and is afforded a hearing to object to it.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Government entities will continue to be able to serve as fiscal agent for the Navajo Nation for capital improvement projects.

AHO/bym