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FISCAL IMPACT REPORT

ORIGINAL DATE 2/15/20
 LAST UPDATED 2/18/20

SPONSOR SCORC HB _____

SHORT TITLE Public Improvement District Act Changes SB CS/246/aSJC/aSf1#1

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY20	FY21	FY22	FY23	FY24		
		No Fiscal Implications			Recurring	General Fund
		No Fiscal Implications			Recurring	PID revenue
		No Fiscal Implications			Recurring	TIDD revenue

Parenthesis () indicate revenue decreases

SOURCES OF INFORMATION

LFC Files

Response Received

Department of Finance and Administration/Local Government Division (DFA/LGD)

SUMMARY

Synopsis of SF1 #1 Amendment

Senate Floor Amendment #1 to Senate Corporations and Transportation Committee Substitute for Senate Bill 246, as amended by SJC strikes the clarification that PID and TIDD boards are subject to the procurement code or local procurement codes. In its place, the SF1#1 amendment repeats the original language of the substitute with regard to PID and TIDD boards being subject to the procurement code by deleting the “notwithstanding” authority. The most important change, is to restrict the power of eminent domain granted. Property subject to eminent domain may exercise no more power than is granted to the governing body and the governing body must, at the mandatory request of the district board, conduct a hearing to determine if the power of eminent domain should be exercised. If the governing body determines that the power of eminent domain exercise should be exercised, then the governing body by resolution authorizes the district board to proceed with the action. The same changes are made in the Public Improvement Act (PID) sections and the Tax Increment for Development Districts Act (TIDD) sections.

Synopsis of SJC Amendment

Senate Judiciary Amendment to Senate Corporations and Transportation Committee Substitute for Senate Bill 246 makes it clear that the district PID and TIDD boards are subject to the Procurement Code or local procurement codes for any public procurement.

Synopsis of Original Bill

Senate Corporations and Transportation Committee Substitute for Senate Bill 246 amends many of the provisions of the Public Improvement District Act (5-11-1 through 5-11-27 NMSA 1978) and the Tax Increment Development District Act (5-15-1 through 5-15-29 NMSA 1978).

A section-by-section description is included as an appendix.

In general, the provisions of the bill move authority – particularly with reference to financial matters – to the sponsoring government body rather than the appointed Public Improvement District (PID) board or Tax Increment Development District (TIDD) board.

Sections 8 and 16 provisions of the bill subject contracts entered into by a district board to the procurement code.

Section 24 amends a section of the audit act to allow a government component unit to be audited separately from its primary government entity and to require that the component unit's audit be included in the primary government entity's audit.

The effective date of this bill is January 1, 2021. Contract initiated on or after January 1, 2021 will be subject to the provisions of the Procurement Code.

FISCAL IMPLICATIONS

There are no direct fiscal impacts of the provisions of this bill. The main thrust of the provisions is to reduce the authority of PID and TIDD boards and to require that contracts executed by PID and TIDD boards conform to the provisions and procedures of the Procurement Code. None of these changes will affect the underlying property tax levies for PIDs or gross receipts tax or property tax increment diversions for TIDDs. Although the SFI amendment allows the district boards to exercise the power of eminent domain, the exercise of the power must be approved by the governing body and can be no more than if the governing body exercised the power.

SIGNIFICANT ISSUES

The provisions of the TIDD Act may narrow the gross receipts tax (GRT) base, so that a proliferation of TIDDs in the state could lead to continually rising GRT rates, increasing volatility in the state's largest general fund revenue source. However, the provisions of this bill are related to governance of PIDs and TIDDs and will neither enhance nor decrease whether these organizational entities are either more or less popular.

A section-by-section description is included as an appendix.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is not met since TRD is not required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers paying property taxes or special levies for public improvements in a PID or from diversions of state and local gross receipts taxes or property taxes supporting infrastructure improvements of a TIDD. Gross receipts data can be easily extracted from TRD's RP-500, but diversions of property tax increments are not transparent and there is no means of generating accurate data on the amount of these diversions.

TECHNICAL ISSUES

Per Senate Floor Amendment #1, concerns about a district board exercising the power of eminent domain are relieved. Pursuant to the amendment, it really becomes the governing body exercising its power of eminent domain, with the role of the district board being reduced to an recommendation and the exercise of executive power implementing the resolution of the governing body. ~~A TIDD board is allowed to make eminent domain decisions and to act on those decisions. The only requirement in this bill is that there must be a notification by the board to the sponsoring government body and that the TIDD board must act on the eminent domain decision within 60 days of the written notice. If the purpose of the written notice is to allow the sponsoring government body a chance to review and approve of a, perhaps, controversial eminent domain decision and action, then the bill could include a minimum period—say 30 days—between the written notice and the initiation of eminent domain action by the PID board or the TIDD board.~~

~~The title of the bill indicates that both PID and TIDD boards have the power of eminent domain. Section 8 explicitly assigns the power to a PID board (page 26, lines 18 through 21). Section 16 (page 61, lines 8 through 12, with repeal of the prohibition in lines 23 and 24) grant similar authority to TIDD boards.~~

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Appendix A

Section-by-Section Description

Section 1: redefines “county” in the Public Improvement District Act (PID Act) to allow for a combined city/county corporation. Also allows “single urban government in the definition of “county.” Single urban county was included in the New Mexico Constitution in 1999 as a means to allow Bernalillo County and the City of Albuquerque to form a single urban government. Although this section (Article X, Section 11) was adopted by the voters, Albuquerque and Bernalillo County have not merged. Section 1 separately defines “municipality” to exclude a county, a combined city and county corporation or a single urban government.

Section 1 also redefines “district board” to simply mean the board of directors of the district. It deletes the requirement that a district board be composed of the members of the governing body or by five directors appointed by the governing body and reappointed not later than six years after formation of the district.

Section 2 updates a statutory reference and cross references the Section 1 change in initial composition of the district board.

Section 3 adjusts procedures for initial formation of a PID and requires the governing body establishing the PID to pass a resolution specifying that qualifying electors of the proposed district must vote to approve the terms and scope of the PID. Section 3 also moves the instruction that each owner of property in the PID gets one vote for each 1/5th of an acre of owned land from the subsection B to subsection C.

Sections 3 and 4 declare that the formation determination election by the owners of a proposed PID is neither a local election or a special election pursuant to the relevant election acts. However, the vote of qualified electors living within the boundaries of a proposed PID (if any) have the right and obligation to vote in a non-partisan election pursuant to the Local Election Act. This vote of qualified electors would include a vote on the formation of the district, a vote on the imposition of a property tax and a vote on changing an existing maximum property tax rate. Three quarters of the voters must approve each of the three possible questions for each to be adopted.

Section 4 also provides for the formation of a PID if there are no qualified electors residing within the boundaries of the proposed PID. In that case, the owners of property within the PID boundaries may make the determination decision.

Section 5 assigns the duty of publicizing any election to the district board instead of the owners.

Section 6 isolates the governing body of the sponsoring jurisdiction from any liability for payment of bonds issued in the name of the PID.

Section 7 allows the sponsoring governing body to appoint a new district board with terms of five years or constitute itself as the governing entity for the PID. This section strengthens the authority of the sponsoring government and reduces the authority of the district board. Essentially, the district board members serve at the pleasure of the sponsoring government body.

Section 8 removes the power to set special property tax levies from the district board and

requires the sponsoring government body to set the special property tax levies that have been approved by the qualified electors or the owners of property within the boundaries of the PID. However, Section 8 clearly allows the district board the authority to exercise the power of eminent domain, provided that the district board provide a maximum of sixty days of written notice to the sponsoring government body of the intent to exercise the power of eminent domain. (Note: the action must occur within 60 days of the written notice, but no minimum notice is required. It might be appropriate to allow the sponsoring government at least 30 days to consider whether the district board is acting appropriately. If the sponsoring government entity does not agree with the eminent domain action, it can fire the district board under the provisions of Section 7.) Section 8 also deletes a provision that let PID boards negotiate contracts outside the Procurement Code. SJC amendment further makes clear that TIDD boards are subject to the Procurement Code or local procurement codes.

Section 9 repeals and reenacts the important provisions regarding the imposition of a property tax for public improvement. The new section allows the district board to make a recommendation that a property tax levy is needed to buy bonds to construct the public improvements. Upon receipt of the recommendation from the district board, the governing body shall call for a hearing and, after debate, determine if the request for GO bond authority is warranted. The section sets a maximum levy of three mills (\$3 per \$1,000 of taxable value). Any bonds sold must have a two-to-one coverage ratio based on new bonds plus outstanding debt. The section also grants the district board sole authority to refund general obligation bonds.

Section 10 repeals and reenacts Section 5-11-20 NMSA 1978 which allows the district board to identify a need for a special operating levy and to convey a request to the governing body to call an election of qualified voters. After a hearing and a positive vote of the governing body, the operating levy can be implemented. Section 10 provides that special operating levies can increase by no more than 2 percent per year, except in the case of default or delinquency of a property owner of another parcel within the district, in which case the operating levy can increase by a maximum of 10 percent. The section has a number of provisions regarding administration of the special levy.

Section 11 repeals the authority that would allow qualified electors to impose greater than 3 mills for all property taxes. Department of Finance and Administration, Local Government Division would receive copies of the annual budget, but, apparently, have no approval authority over the budget.

Section 12 amends the definitions in the Tax Increment for Development Act (TIDD Act) in similar fashion to the changes in the PID Act.

Section 13 amends the formation determination portions of the TIDD Act in exact parallel to the provisions in Sections 3 and 4 relative to the formation determination of a PID although a TIDD is not limited to a maximum of three mills in this section.

Section 14 amends the provisions for formation of a TIDD.

Section 15 changes the appointment provisions of the TIDD board. Members are appointed by the sponsoring government body, which may appoint itself to be the TIDD board. If members are appointed, their term of service would be five years.

Section 16 makes clear that the district board may not separately impose property taxes, but unlike the provision for PIDs, may not exercise the power of eminent domain. Section 16 also deletes a provision that let TIDD boards negotiate contracts outside the Procurement Code. SJC amendment further makes clear that TIDD boards are subject to the Procurement Code or local procurement codes.

Section 17 allows the governing body, not the district board, to impose a property tax upon real property (but not tangible personal property?) with a maximum rate of 5 mills, and such property tax would expire at most in four years. A separate election could reimpose the operating levy.

Section 18 moves the authority to pledge a gross receipts tax increment to the repayment of TIDD increment bonds to the governing body.

Section 19 similarly changes the authority for property tax increment bonds to the governing body.

Section 20 reiterates the change in authority for approving bonds backed by state gross receipts tax increment from the district board to the governing body.

Section 21 is a technical change related to the use of TIDD revenues when a TIDD is winding down.

Section 22 instructs TRD how to handle distributions if the TIDD base year changes.

Section 23 reiterates with respect to the state gross receipts tax increment that the sponsoring governing body, and not the TIDD district board, is responsible for approving a dedication or increase in a dedication and notifying TRD of the change.

Section 24 amends the provision in the audit act to allow a government component unit, such as a PID or TIDD, to be audited separately from its primary government entity and to require that the component unit's audit be included in the primary government entity's audit.

Section 25 is a temporary provision allowing an orderly transition from current procedures appointing PID or TIDD board members. Current members will serve until December 31, 2021 and replacement members will be named and begin serving on January 1, 2022.

Section 26 set the applicability provisions of Sections 8 and 16 relating to the Procurement Code for public procurement initiated on or after January 1, 2021.

Section 27 establishes the effective date of the provisions of this act to be January 1, 2021.