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FISCAL IMPACT REPORT

ORIGINAL DATE 03/01/21
LAST UPDATED 03/03/21 **HB** 299/aHLLC
SPONSOR Small
SHORT TITLE Improvement Special Assessment Act **SB** _____
ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23	FY24	FY25		
No direct revenue impacts; Counties would incur administrative impacts						State, County and Municipal
(1% administrative fee)					Recurring	Electing Counties (1% Administrative fee)

Parenthesis () indicate revenue decreases

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$100.0	\$100.0	\$100.0	\$300.0	Recurring	EDD Operating Budget

Parenthesis () indicate expenditure decreases.

May conflict with Renewable Energy Financing District Act 5-18-1 through 5-18-13 NMSA 1978. May conflict with HB15 Sustainable Building Tax Credit. May conflict with HB106, HB173, SB84 and SB243 which all relate to solar improvements.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Economic Development Department (EDD)
 Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of HLLC Amendment

The House Local Government, Land Grants and Cultural Affairs Committee amendment to House Bill 299 cleans up a typographical error and clarifies that a county official may issue special assessment assignable certificates on behalf of the county.

Synopsis of Original Bill

House Bill 299 proposes to enact the “Improvement Special Assessment Act”. This would provide an alternative means of financing energy efficiency improvements, renewable energy improvements, water conservation improvements or resiliency improvements installed on privately owned commercial, industrial or agricultural or nonprofit real property or multifamily residential real property with five or more dwelling units. To establish this improvement special assessment program, the board of county commissioners would enact an ordinance establishing a program whereby improvement loans would be repaid by special assessments on eligible property benefitting from the financed improvements. The funds to be used to install the improvements would be provided by private interests and would bear appropriate interest and would be repaid by special property tax levies imposed on the participating property owners. These payments would be administered by the sponsoring county treasurer. The special levies would be paid at the same time and in the same manner as property tax assessments or in separate billings.

Finally, the Solar Energy Improvement Special Improvement Act (4-55C-1 through 4-55C-9 NMSA 1978) is repealed.

There is no effective date of this bill. It is assumed that the effective date is 90 days after this session ends. (June 18, 2021)

FISCAL IMPLICATIONS

There are no fiscal implications from the provisions of this bill for state agencies. The bill imposes significant administrative duties and tasks on county treasurers in counties that elect to sponsor improvement special assessment program. Electing counties can impose reasonable administrative fees not to exceed 1 percent of the amounts financed.

SIGNIFICANT ISSUES

The provisions of this bill seek to remedy some of the defects of the Solar Energy Improvement Special Assessment Act (Sections 4-55C 1 through 4-55C-9 NMSA) and the Renewable Energy Special Assessment Act (5-18-1 through 5-18-13 NMSA 1978). Both acts have been unsuccessful in providing alternative financing for solar, wind and other energy conservation improvements on private property. In both cases, the issue has been that the sponsoring county has not guaranteed the debt in the case of delinquency. In the case of the Solar Energy Improvement Special Assessment Act, a lien against the property was considered “co-equal” to property tax liens. This refusal to subordinate meant that the banks and other lending institutions were unwilling to provide financing since there was no remedy for the banks in case of delinquency. In the case of the Renewable Energy Special Assessment Act, there was no mention of procedures in the case of delinquency. This bill provides clear procedures in the case of delinquencies more than one year. In the default, a delinquency is handled as a foreclosure of a mortgage.

One remaining issue of this Improvement Special Assessment Act is that there are virtually no incentives for private owners to participate in the program and few incentives for counties to establish such programs. The property owners apparently negotiate terms and conditions with private lenders and are granted the loan based on each owner's credit worthiness. The county does not guarantee the loan and such a guarantee would probably violate the Constitutional Anti-donation clause. The bill in Section 7 and again in Section 10 mention that the county is not a guarantor of the debt.

The bill contains several features dealing with eligible improvements, certification of those improvements and procedures in the case of delinquencies. It also deals with the relative hierarchy of liens against the properties.

Because of the scale of these improvements, a licensed engineer or other professionals would have to certify those improvements. The bill contains extensive provisions detailing responsible parties and procedures to deal with prepayment and partial payments of special assessments. The individual property owner proposing eligible improvements would, apparently, be required to negotiate terms and conditions with a capital provider for funding the improvements and would then apply to the county to have a lien filed and repayment made through the special assessment.

One important provision of the bill is that the special assessment lien runs with the land and that portion of the special assessment lien that has not yet become due is not accelerated or eliminated by foreclosure of the special assessment lien or any lien for taxes of assessment imposed by the state or local government against the property on which the special assessment lien is imposed.

The bill also contains extensive provisions for the procedures to deal with payment delinquencies. Basically, delinquent special assessment payments have the effect of a mortgage and may be foreclosed and sold in the manner provided by law for the foreclosure of mortgages. Apparently, the county is guaranteeing payment of the special assessment liens, since the bill provides three alternatives after the property is foreclosed and no purchaser is found to purchase the debt:

- (1) Offer the property to the capital provider as long as any property taxes have been paid by the capital provider;
- (2) The county, itself, may purchase the property sold at the foreclosure sale.
- (3) The county may bid, in lieu of cash, the full amount of the assessment, interest, penalties, attorney fees and costs found by the court to be due and payable.

Section 10 of the bill, however, provides immunity for the county. Such immunity means that nothing in the Improvement Special Assessment Act should be interpreted to pledge, offer or encumber the full faith and credit of a county. If a county fails to foreclose and sell a delinquent property, the capital provider may foreclose the special assessment lien on the delinquent property in the manner provided by law for the foreclosure of mortgages on real property.

EDD is assigned the task of preparing a program guidebook for an improvement special assessment program.

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 Counties that have established such programs or property owners that have elected to participate.

ADMINISTRATIVE IMPLICATIONS

EDD notes that the timeline for developing the guidebook may be difficult to meet:

Section 9 (A) sets out a ninety-day requirement from the effective date of the Improvement Special Assessment for the production and dissemination of the program guidebook governing the terms and conditions under which financing for special assessments may be made available through the program. This deadline would seem to be unrealistic for the development, review evaluation and creation of such a guidebook and related documents (Sec. 9 A. (1) - (5)).

The Economic Development Department has 52 authorized FTE compared with 70 FTE a decade ago, and the agency has less operational funding than a year ago as well. Furthermore, the agency is one of just two major agencies to receive an operating budget cut from FY20 to FY21.

The bill creates a moderate administrative impact, necessitating one FTE at the Economic Development Department to implement and administer the program. The estimated additional budget impact assumes an individual with knowledge of evaluating technical energy and water conservation, real estate and legal experience. The ongoing county costs can be recaptured by imposing fees for program administration within the assessment once the program is operational but will require the county to cover those administrative costs up front.

Ongoing reporting as well as electronic tracking systems may require additional budgetary resources not identified within the existing EDD budget.

The improvement special assessment program created by this bill and the responsibilities of assessing and administering the projects fall outside the area of expertise within the Economic Development Department and might be better suited to the Energy, Minerals and Natural Resources Department because of the nature of the technical expertise required for project assessment and program function.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

May conflict with Renewable Energy Financing District Act Sections 5-18-1 through 5-18-13 NMSA 1978. May conflict with HB15 Sustainable Building Tax Credit. May conflict with HB106, HB173, SB84 and SB243 which all relate to Solar improvements.

TECHNICAL ISSUES

On page 13, line 19, there is an unusual use of the word “taxed” to mean costs imposed by the court in addition to attorney fees and costs. Perhaps “imposed” might be a better word choice.

OTHER SUBSTANTIVE ISSUES

EDD points out that there are few, if any, banks or other financing entities that would be interested in providing financing pursuant to the provisions of this bill.

LG/al/rl