

LFC Requester:	Torres
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**AGENCY BILL ANALYSIS
2023 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date 2/14/2023
Bill No: SB90

Sponsor: Benny Shendo, Jr. **Agency Name and Code Number:** New Mexico Public School Facilities Authority 940
Short Title: TRIBAL GRT RATES

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

Senate Bill 90 removes limitations on a tribe’s sales tax rate in order to qualify for cooperative agreements and a 75 percent credit against the gross receipts tax due.

FISCAL IMPLICATIONS

Indeterminate to the Public School Facilities Authority (PSFA).

SIGNIFICANT ISSUES

The PSFA is the administrative arm of the Public School Capital Outlay Council (PSCOC). The New Mexico Legislature established the PSCOC and the PSFA to implement the Public School Capital Outlay Act, as a result of the Zuni Lawsuit. In the Zuni Lawsuit, the litigants challenged the equity of the state capital outlay distribution. The Court ruled in favor of the litigants and held that public school capital outlay funding in New Mexico violated the State Constitution guarantee: establishment and maintenance of a “uniform system of free public schools sufficient for the education of all children of school age.” As a result of this ruling, “the New Mexico Public School Capital Outlay Act was adopted to ensure that the “physical condition and capacity, educational suitability and technology infrastructure of all public school facilities in New Mexico meet an adequate level statewide and the design, construction and maintenance of school sites and facilities encourage, promote and minimize safe, functional and durable learning environments in order to for the state to meet its educational responsibilities. “ Section 22-24-2 NMSA 1978.

The PSFA administers the programs funded by the PSCOC from the Public School Capital Outlay Fund. (PSCOF). Funds from the PSCOF are awarded to school districts for Standard-based and Systems-based projects contingent on certain criteria for the construction of new schools, facility replacements and refurbishment. In these instances, the PSFA becomes the Co-Owner in the construction project with the school districts.

PSFA has relied on the New Mexico Attorney General Opinion No. 03-03 which concluded that Indian tribes, pueblos and nations (collectively referred to as "tribes") do not have the authority to impose taxes on contractors performing work for the State of New Mexico on the tribes' reservations.¹ In 2014, the PSCOC through the PSFA obtained a legal opinion regarding whether the Zuni Pueblo could tax the PSFA, PSCOC or their contractors for work performed to the Zuni Pueblo School. The legal opinion relied on the New Mexico Attorney General Opinion No. 03-

03 and two United States Supreme Court cases confirming that the Zuni Pueblo could not tax the PSFA, PSCOC, the Zuni Public School District, or their contractors for work performed to the Zuni Public School. Consequently, the PSFA, PSCOC have not paid taxes to the tribes for state funded school construction projects on tribal lands.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS

¹ The New Mexico Attorney Opinion 03-03 based its opinion on the assumption that the contractors on which the Navajo Nation and other tribes for which they were attempting to impose a tax were not members of the tribes.