F I S C A L   I M P A C T   R E P O R T

SPONSOR HRDLC	**ORIGINAL DATE** 02/10/22 **LAST UPDATED**	**HB**	173/HRDLCS
SHORT TITLE	Rural Infrastructure Crisis Response Act	**SB**	
		ANALYST	Hitzman

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY22	FY23		
$1,600.0		Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY22	FY23	FY24		
	($24,931.0)	($22,952.0)	Recurring	Severance Tax Bonding Fund

(Parenthesis ( ) Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications	See Fiscal Implications			

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Response Received
Department of Finance and Administration (DFA)
Department of Homeland Security and Emergency Management (DHSEM)
State Investment Council (SIC)

No Response Received From
State Treasury

SUMMARY

Synopsis of Bill

The House Rural Development, Land Grants and Cultural Affairs Committee substitute for House Bill 173 creates the Rural Infrastructure Crisis Response Act and the rural infrastructure crisis response fund within the State Treasury to fund rural infrastructure repair and replacement projects. The bill provides for definitions to be used in the act related to crisis events and eligible projects. The substitute clarifies definitions of "tribe," "durable equipment," and "rural infrastructure crisis response project."

The bill provides that, starting January 1, 2023, projects for replacement or repair of critical public infrastructure are eligible for financial assistance when a relief request has been submitted and the secretary of the Department of Finance and Administration determines eligibility. Project eligibility requirements as outlined in the bill include: the project is for repair or replacement due to a crisis event; damage to the infrastructure severely affects health or public safety; the local authority lacks resources elsewhere to repair or replace the infrastructure; and that no other financial assistance is available for that purpose.

The bill specifies who can submit a request, to include a local authority or a state representative or senator. Within 30 days of receiving a relief request, the bureau of rural infrastructure crisis response within the local government division of DFA, which is also created in this bill, shall evaluate eligibility for the project requested, qualify financial hardship and within 15 days must issue a determination of whether the request met the requirements. The bill, as substituted, notes that the DFA secretary, upon determination of eligibility, must certify to the state Board of Finance the need to issue bonds or award grants from the fund for rural infrastructure owned by tribal entities. By June 15th and December 15th each year, DFA shall submit to the Board of Finance the certifications issued for the prior six months, provided that the secretary shall not issue certifications or awards worth more than $1 million in grants for projects in a given calendar year. The bureau can provide evaluations of relief requests and may hire staff as needed.

The bill also appropriates $1.6 million from the general fund to the Department of Finance and Administration for fiscal years 2022 through 2025 for staff and contractual services for engineering and financial evaluations, provided that no more than $400 thousand can be expended in any one fiscal year.

Money in the fund shall be used to make grants to local authorities or to the tribal infrastructure board when applicable for up to 95 percent of the total cost for an eligible project or 100 percent of the cost if a financial hardship qualification certificate is issued by the bureau and approved by the secretary of DFA. Construction for projects must be designed in compliance with engineering requirements established by the secretary and, by November 30th each year, the department shall provide a report on the status of eligible projects and outstanding demand. The distribution occurs *prior* to the estimation of bonding capacity and only if the Board of Finance determines there is no potential shortfall in debt service obligations.

The bill, as substituted, also amends statute relating to transfers to the severance tax permanent fund. The bill provides that by January 15th every year, the division shall estimate the amount of bonding capacity available for severance tax bonds to be authorized by the Legislature and shall allocate 2.25 percent of the estimated bonding capacity for rural infrastructure crisis response projects. The state Board of Finance may issue and sell the bonds in the same manner as other severance tax bonds in amounts not to exceed the authorized amounts. The board shall also take appropriate steps to comply with the federal Internal Revenue Code of 1986, as amended. Proceeds from the sale of bonds are appropriated to the rural infrastructure crisis response fund.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

The appropriation of $1.6 million contained in this bill is considered a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2025 shall revert to the general fund. Although HB173 does not specify future appropriations, establishing a new grant program could create an expectation that the program will continue in future fiscal years, and DFA will have a continued need for funding for staff and contractual services to administer the program, therefore this cost is scored as recurring.

The bill also establishes a new bureau within DFA that will require staff and administrative support. While the extent of this need is difficult to determine, there will be additional operating budget impacts within the department to ensure coverage of these expenses and it is likely that DFA will need additional operating funds to support the activities of the new bureau over time.

The fund, created in the State Treasury, consists of appropriations, donations, interest, and other money distributed to the fund. The fund is non-reverting. The bill will result in decreases in severance tax bonding funds, as the bill provides for 2.25 percent of the estimated bonding capacity to be allocated to rural infrastructure crisis projects each year. The allocations provided for in the bill would impact FY23 and subsequent years but would not impact issuance of STBs for FY22 in June 2022. According to the Board of Finance, "the estimated allocations are based on the most recent STB capacity estimates for the 2022 legislative session. For FY23, the allocation for the rural infrastructure crisis response fund is $24.9 million" and the amount for FY24 is estimated at just under $23 million.

Because this bill creates a new fund and provides for continuing appropriations, the LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the Legislature to establish spending priorities.

Additionally, DHSEM notes that by creating a standalone fund, the state may be losing out on an estimated $194.7 million in federal dollars available for similar purposes. Because FEMA grants require state matching funds, which can be a barrier to entry for local jurisdiction, "by separating the criteria for award from the existing FEMA programs and making this a stand-alone fund, there is no increase in accessibility for the much higher dollar figure federal programs."

If the funds would have otherwise made it to the severance tax permanent fund, there is an opportunity cost on the lost revenues that would have been generated on the investment of those funds. The SIC also notes this opportunity cost as well as the possibility that the funding, if sitting in the fund at the State Treasurer's office, will be limited to stable, low-risk low-return investments and will not grow in value but may instead lose real value relative to inflation.

ADMINISTRATIVE IMPLICATIONS

DFA will likely need to request operating funds in future years to support development of the new bureau and, although the bill provides for $400 thousand per year through 2025, the agency will likely need ongoing administrative and financial support to continue the activities of the bureau long-term. The bureau may require more than the $400 thousand per year if the volume of applications for relief funding is higher than anticipated.

The Board of Finance notes that, because the funding is allocated through the issuance of severance tax bonds or notes via an earmark set aside of 2.25 percent, the administrative implications would be minimal for Board of Finance staff, as the division already has processes in place for funding earmarks. By establishing a 2.25 percent earmark of STB capacity annually, HB173 establishes emergency infrastructure crisis funding as a priority of capital funding similarly to water projects, Colonias projects, and tribal projects, which currently receive earmark STB funding. DFA notes that the proposed earmark under the bill, however, is less than the already-established earmarks for water (9 percent), Colonias (4.5 percent) and tribal projects (4.5 percent).

TECHNICAL ISSUES

The bill notes that funding awards may not exceed $1 million per calendar year, but it is unclear how many construction projects can successfully be completed with that level of funding, especially if awards can cover up to 100 percent of project costs. Additionally, it is unclear whether projects can be funded over multiple years, as construction generally takes longer to complete, and the bill does not provide funding for ongoing maintenance or support of the infrastructure once repaired or replaced.

Further, if only $1 million may be awarded for grants in a given year, the rural infrastructure crisis response fund is likely to build up a large balance relatively quickly if receiving large amounts from the severance tax bonding fund. For instance, the estimated allocation for FY23 totals $24.9 million, of which only $1 million may be awarded in a given year.

The Board of Finance notes that the way the bill is currently structured, HB173 provides for a dedicated funding source for the rural infrastructure crisis response fund into the future. The Board of Finance also notes that earmarks are nearly always funded via taxable sponge note issuances, as the programs often require more flexibility in funding than a tax-exempt issuance might provide. Under HB173, the earmark would be funded with senior sponge notes unless cash restricted the Board of Finance from issuing taxable notes for earmarks.

The use of senior STB proceeds for the fund may trigger IRS tax implications when issuing tax-exempt bonds. However, the bill appropriately includes language providing the Board of Finance the authority to ensure that it complies with federal IRS requirements when issuing.

DHSEM also notes that, by limiting this program to post-disaster only, the fund can never be accessed by local jurisdictions attempting to utilize pre-disaster mitigation funds.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB173 duplicates the Federal Hazard Mitigation Assistance grant program (specifically Building Resilient Infrastructure and Communities) overseen by DHSEM Mitigation Unit. DHSEM notes that the bill misses "an opportunity to leverage state funds into greater access of federal dollars" through the existing HMA program.

ALTERNATIVES

DHSEM suggests the following amendments: "modify the award criteria, extend the reversion timelines, and specify that the funds are to be used first as match for federal programs and second as standalone emergent funding, among other changes." DHSEM also recommends that the proposed legislation be amended to be in compliance with the STORM Act (S.3418 - STORM Act), which incentivizes a state level grant matching loan fund.

The SIC also provides the following alternative for housing the response fund:

> If the intent is to grow a state emergency fund that is permanent in nature, a statutory allowance placing it with the State Investment Council would offer a greater potential for long-term growth of the corpus, which likely cannot be achieved with short-term lower-risk investments at the Treasury.

POSSIBLE QUESTIONS

Is there currently sufficient demand for infrastructure crisis funding in New Mexico that such a significant amount of capital will be effectively deployed?

Is this proposed funding going to duplicate already existing sources or methods for emergency funding delivery within the current state and federal government systems?

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