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FISCAL IMPACT REPORT

SPONSOR Ortiz y Pino ORIGINAL DATE 2/7/22
 LAST UPDATED 2/14/22 HJR _____

SHORT TITLE Use of State Funds for Household Svcs., CA SJR 7/aSJC

ANALYST Dick-Peddie

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total			\$10,000.0- \$100,000.0	\$10,000.0- \$100,000.0	Recurring	See Fiscal Implications
		\$25.0		\$25.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Relates to HJR1

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Public Regulation Commission (PRC)

New Mexico Attorney General (NMAG)

Department of Transportation (DOT)

SUMMARY

Synopsis of Senate Judiciary Amendment

The Senate Judiciary Committee amendment strikes most instances of the word “household.” The amendment also strikes the first appearance of the word corporation and inserts the phrase “organized and operated exclusively for educational or eleemosynary purposes.” The amendments open up the possibility of providing state resources to entities beyond residential needs, which may increase the fiscal implications of the joint resolution. The amendments mirror amendments made to HJR1, the related house legislation.

Synopsis of Original Bill

Senate Joint Resolution 7 amends the “anti-donation clause” (Article 9, Section 14 of the New Mexico Constitution) to add a new subsection allowing the use of state funds or resources to

provide essential household services. SJR1 defines "essential household services" as "infrastructure that allows internet, energy, water, wastewater or other services as provided by law." The proposed subsection would require implementing legislation by a majority vote of each house of the Legislature.

The proposed subsection J provides for the expenditure of state funds or resources, including real estate or equipment, by the state, a county, or a municipality for the use of a federally recognized nonprofit corporation or cooperative corporation, upon approval by the majority of each house of the Legislature, for the purpose of advancing community well-being.

The proposed amendment, if approved, is to be voted on at the next regular general election held after the adjournment of that Legislature or at a special election to be held not less than six months after the adjournment of that Legislature.

FISCAL IMPLICATIONS

The constitutional amendment would allow the Legislature to appropriate state funds for access to infrastructure for internet, energy, water, or wastewater services upon passage of enacting Legislation by a majority of both houses. SJR7 specifies that implementing legislation should contain "safeguards to protect public money," but does not define the term "safeguards." SJR7 does not cap appropriation amounts for these purposes, making the true potential fiscal impact difficult to determine. The LFC additional operating budget impact table reflects an estimate of potential costs to state resources based on past appropriations for qualifying services such as broadband and residential water projects.

It is unclear if the bill's provision allowing funding for "*accessibility* to essential household services" precludes direct payments to either residents or utility companies to prevent delinquency shut-offs for water, wastewater, or internet access. In March 2021, the Public Regulation Commission reported approximately \$60 million in delinquent charges for utility bills resulting from the Covid-19 pandemic.

Additionally, the Department of Transportation (DOT) notes the joint resolution could allow enabling legislation to direct the expenditure of resources such as DOT right-of-way (ROW) to be used for non-public entities, which could have an unknown, but significant fiscal impact. The departments continue:

NMDOT right-of-way (ROW) is a valuable resource to the citizens of the state because it serves as a contiguous public utility corridor network throughout the state and is exempt from county or municipal zoning regulation. Private stockholder-owned internet broadband businesses and member-owned cooperatives have been negotiating with the NMDOT to use its ROW for free or for less than fair market value in lieu of acquiring private easements. Two long-haul or back-haul fiber optic cable businesses that wish to cross the state by using Interstate ROW have offered revenue sharing or per mile payment options and/or to share their fiber optic resources with state government.

At this time, NMDOT cannot determine the fiscal impacts that would result from passage of HJR 1 because those impacts would depend on the enabling legislation directing the expenditure of state funds or resources for non-public entity use of NMDOT ROW for the provision of "essential services". Essential services such as energy, water, and

wastewater are already accommodated within NMDOT ROW through existing statutes and 17.4.2 NMAC.

If the enabling legislation directed the NMDOT to make ROW available for essential services, including internet, the cost to the NMDOT and the taxpayers would depend on whether the ROW would still be available for concurrent use for transportation purposes. For example, if an internet broadband business wanted to install aerial cable and pole facilities in the NMDOT ROW, the subject ROW could not also be used by the NMDOT for a driving surface or a safety “clear-zone” void of collision dangers (the aerial poles). However, if the ROW were to be used for a buried cable installation or a wastewater pipeline, the NMDOT likely could pave over the buried cable or pipeline for concurrent use as a highway, except for areas needed for access vaults, pedestals, lift-stations, power, switching rack-space, valves, service and maintenance buildings and huts. These two differing uses, for an aerial or a buried facility, could have drastically different fiscal impacts on the NMDOT and the public ROW.

The operating budget impact table does not include a fund affected by SJR7, as the bill does not specify which funds would be available for use.

The Secretary of State (SOS) notes:

The SOS supports and understands the Legislature’s prerogative to place constitutional amendments before the voters of the state. For the purposes of determining the costs involved, the SOS wishes to inform legislators that, under Section 1-16-4 NMSA 1978, the SOS is required to print the full text of each proposed constitutional amendment, in both Spanish and English. The cost of producing the voter guide will change depending upon the number and length of the constitutional amendments passed and the number of registered voters but can be estimated at \$25 thousand.

The SOS is also constitutionally required to publish the full text of each proposed constitutional amendment once a week for four weeks preceding the election in one newspaper in every county in the state. In 2020, the SOS spent \$351,015 for the required newspaper publications, however, the cost is dependent upon the number and length of the constitutional amendments that are passed. For planning purposes, an estimate of \$20.72 per word may be used to represent the costs realized in the 2020 general election to estimate the cost of publishing each constitutional amendment.

SIGNIFICANT ISSUES

The enactment of SJR7 could help resident’s access critical services during extenuating circumstances, such as the Covid-19 public health emergency, when resources may be available but the state’s ability to administer those resources is strained.

Some state and quasi-governmental agencies such as the Renewable Energy Transmission Authority, Office of Broadband, and the Public Regulation Commission have existing authority to provide access to essential household services without amending Article 9.

The PRC elaborates:

The definition of “essential household services” includes infrastructure for energy, water, and wastewater services. Other than some municipal utilities, such services are provided by investor-owned utilities and member-owned rural cooperatives which are currently regulated by the New Mexico Public Regulation Commission (“Commission”) pursuant to the Public Utility Act (“PUA”). The PUA provides for these public utilities to have the exclusive right to serve retail customers in their service territory. This may conflict with the expenditure of state funds or resources to develop the supporting infrastructure as provided for by the proposed subsection H as contained in this joint resolution. Any such conflict would only become clear upon review of the implementing legislation.

TECHNICAL ISSUES

The Public Regulation notes language in the bill may be conflicting:

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CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SJR7 partially duplicates HJR1.

ADP/acv/al