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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Munoz</u>	<b>LAST UPDATED</b> <u>03/13/23</u> <b>ORIGINAL DATE</b> <u>02/01/23</u>
<b>SHORT TITLE</b> <u>Federal Infrastructure Matching Fund</u>	<b>BILL NUMBER</b> <u>Senate Bill 25/aSIRC</u>
<b>ANALYST</b> <u>Hitzman</u>	

### APPROPRIATION\* (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
	\$100,000.0	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent version of this legislation.

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

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

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent version of this legislation.

Relates to Senate Bills 197 and 86.  
 Relates to appropriations in the General Appropriation Act of 2023.

### Sources of Information

LFC Files

Responses Received From  
 State Treasurer  
 Indian Affairs Department  
 Department of Finance and Administration  
 Department of Health

## SUMMARY

### Synopsis of SIRC Amendments to Senate Bill 25

Senate Indian, Rural and Cultural Affairs Committee amendments to Senate Bill 25 (SB25) remove expenditure limitations on the appropriation, which previously limited spending from the fund of \$10 million per year.

## Synopsis of Original Bill

Senate Bill 25 (SB25) creates the federal infrastructure matching fund within the state treasury and appropriates \$100 million from the general fund to the federal infrastructure matching fund for the purpose of meeting grant requirements for federal tribal infrastructure grants. The bill amends the Tribal Infrastructure Act to authorize grants from this newly created fund. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund. The funds are to be administered by the Department of Finance and Administration (DFA), with money in the fund subject to appropriation by the Legislature. The original bill specifies that the total amount that may be expended from the fund per year is \$10 million, but SIRC amendments removed this limitation. Tribal governments may submit applications, to include project approval by the state fiscal agent. The tribal infrastructure board will provide the application forms and specify by rule application requirements in consultation with tribal governments, including a maximum allotment allowable for any one grant.

This bill does not contain an effective date, and as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed.

## FISCAL IMPLICATIONS

The appropriation of \$100 million contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balances shall not revert. The appropriation is able to be expended in FY24 and subsequent fiscal years.

Although Senate Bill 25 does not specify future appropriations, establishing a new funding program could create an expectation the program will continue in future fiscal years; therefore, this cost is assumed to be recurring. Further, this bill creates a new fund and provides for continuing appropriations. LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds because earmarking reduces the ability of the Legislature to establish spending priorities. Not counting income from investment of the fund, the fund would require additional appropriation or other addition to continue after about 10 years.

Further, the Indian Affairs Department (IAD) notes the possible need for additional FTE to provide increased administrative support, but the agency did not provide anticipated costs. However, the agency's average FTE cost totals \$114 thousand as of September 2022, so any additional staff would result in an additional operating budget impact of roughly \$114 thousand per FTE annually. Additional staff may also be needed at the Department of Finance and Administration (DFA), whose average FTE costs total \$106.5 thousand per FTE annually.

DFA provides the following:

While there are a few federal grant programs that, particularly with the support of the Bipartisan Infrastructure Legislation, are offering as much as 100 percent federal funding to rural, tribal, and jurisdictions meeting definitions as historically disadvantaged or areas of persistent poverty for the US DOT RAISE grant opportunity, these programs are limited in number. Much more commonly, a federal grant program is requiring the applicant match the federal award funds in amounts that can range from 5 percent to 50 percent, and even as much as 75 percent of the total project costs. This emphasizes the importance of having available a state fund that can be used for meeting required matches for federal infrastructure grants.

## SIGNIFICANT ISSUES

It is likely the intent of the bill is to benefit the tribes who have shortfalls and have exhausted other funding sources for infrastructure projects. DFA reports working with IAD to determine the extent of need for projects experiencing cost overruns and shortfalls; however, a final estimate of that need is yet to be released by the department. It is unclear whether \$100 million is an appropriate amount for the fund or how much is projected to be spent in a single year now that SIRC amendments to the bill remove yearly expenditure limitations.

According to IAD, the process for requesting funding from the newly created fund would have to be established within the existing tribal infrastructure fund (TIF) guidelines and procedures with consultation from tribal stakeholders on how to request the funding. IAD notes, “The expected results would be for a tribe to request funding based on the process that is implemented through tribal consultation and to add that request to their ‘current’ TIF funding appropriation.” IAD notes there may be issue if there is an influx of requests from tribes with shortfalls and there may be an influx of tribes requesting no-cost extensions on their projects to expend the additional funding. This would also depend on whether the project is a design or construction project that has three years to be completed and whether the additional funding will be utilized before the grant expiration date.

The Department of Health (DOH) notes recent instances in which tribal leadership has voiced concerns surrounding the issue of federal matching fund requirements and notes, “By adding this section to TIF, this would alleviate some of the financial burden experienced by tribes and potentially allow for expansion of tribal infrastructure and development currently inaccessible.” Through SB25, DOH notes tribal governments would be eligible to apply for funds to cover federal grant matching requirements, thereby increasing access to federal grant funding in support of infrastructure projects in tribal communities. This bill also relates to the DOH strategic plan.

Further, DFA notes the bill does not specify funds to support the costs of administering the federal infrastructure matching fund or the program making grants from it. It is unclear whether the apportionments specified in 6-29-6 NMSA 1978 to DFA and IAD for administering the existing tribal infrastructure trust fund and Tribal Infrastructure Act could be used also for the federal infrastructure matching fund, or whether they would be adequate for both.

DFA provides another important consideration: whether these matching funds could be used in support of applicant’s costs for the federal Environmental Protection Agency clean water (wastewater treatment) and drinking water infrastructure programs, which the EPA routinely mandates come in the form of state revolving funds with favorable interest terms and only some outright grants, such as implemented in the programs administered by the New Mexico Environmental Department. DOH notes “of the 17 TIF projects approved in the 2022 TIF application process, 8 are directly related to improving water and wastewater systems.”

## ADMINISTRATIVE IMPLICATIONS

As noted by IAD, the tribal infrastructure fund was created by the Tribal Infrastructure Act in 2005, recognizing that many of New Mexico’s tribal communities lack basic infrastructure, including water and wastewater systems, roads, and electrical power lines. Through this

competitive funding, all federally recognized tribes, nations, and pueblos within New Mexico have an opportunity to submit a robust project proposal for their communities. At each funding cycle, the project proposal is evaluated and, based on scoring, awarded funds through the 13-person Tribal Infrastructure Board, administratively attached to IAD. As noted above, IAD could need additional staffing or funds for contracting to build capacity at the department. DFA, as administrator of the fund, would likely need an increase in its administrative capacity to manage the fund and distribute appropriations in accordance with SB25. However, the agency did not provide cost estimates for meeting this need.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

If passed, DFA notes the following bills to enhance planning and funding of infrastructure projects in New Mexico can augment the effectiveness of this bill’s proposed federal infrastructure matching fund:

- SB 197 – To establish an Infrastructure Planning and Development Office to coordinate services and facilitate planning, prioritizing, and funding for resilient infrastructure and systems statewide.
- SB 86 – To establish a Rural and Tribal Development Institute at NMSU to identify baseline conditions that support sustainability or dynamic growth; survey for methods used in other areas and determine effectiveness and as warranted applicability for New Mexico; develop a state strategy for rural and tribal development and assist rural and tribal communities in development of their own strategies; and provide training for existing leaders as well as students.

The bill also relates to an appropriation in the General Appropriations Act of 2023, which includes \$5 million for the Department of Finance and Administration for state and local match assistance for federal grants, which could presumably be used to support tribal projects. In addition, that bill also includes \$25 million to the Indian Affairs Department for tribal projects, including to match federal infrastructure grants and capacity building grants for improving behavioral health access among Native Americans.

## **ALTERNATIVES**

Instead of creating a new fund, additional funds could be appropriated to the existing tribal infrastructure fund. However, DFA notes, “Without altering the restrictions on amounts able to be expended annually—four and seven-tenths percent of the average of the year-end market values of the trust fund for the immediately preceding five calendar years—this would fail to have the potential to provide as much matching funds or serve as many communities. Also, proposals for matching funds would have to compete with infrastructure projects for which federal grants may not be available.”

Additionally, tribal entities can still apply for matching funds through other sources, such as DFA, which received funding in FY23 to provide grants to eligible entities to provide state matching funds for federal grant programs and for projects experiencing cost overruns.