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

		ORIGINAL DATE	01/28/14		
SPONSOR	Candelaria	**LAST UPDATED**	01/28/14	**HB**	
SHORT TITLE	N.M. Disadvantaged Community Assistance			**SB**	39
				ANALYST	Daly

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	**FY15**		
$1,000.0		Nonrecurring	Public Project Revolving Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	**FY15**	**FY16**		
See Narrative	See Narrative	See Narrative	Recurring	Wastewater Facility Construction Loan Fund

(Parenthesis ( ) Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		$85.0	$85.0	$165.0	Recurring	General Fund
		$174.0	$250.0	$424.0	Recurring	Public Projects Revolving Fund
	$307.0	$307.0	$307.0	$921.0	Recurring	Wastewater Facility Construction Loan Fund
		$3.5	$3.5	$7.0	Recurring	MFA General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From

New Mexico Finance Authority (NMFA)
Attorney General's Office (AGO)
Department of Finance and Administration (DFA)
New Mexico Environment Department (NMED)
Office of the State Engineer (OSE)
Mortgage Finance Authority (MFA)

SUMMARY

Synopsis of Bill

Senate Bill 39 effectively repeals the New Mexico Community Assistance Act and replaces it with the New Mexico Disadvantaged Community Assistance Act (the Act). Its major provisions:

- Declare the purposes of the Act are to ensure adequate financial resources for infrastructure development for disadvantaged communities and provide for planning and development of infrastructure projects to improve quality of life and economic development in an efficient and cost-effective manner;
- Define "disadvantaged community" as an unincorporated rural community or an association organized under the Sanitary Projects Act (mutual domestic water associations), all of whose members lack a potable water supply, adequate sewage systems, or decent, safe and sanitary housing and are ineligible for funding under the colonias or tribal infrastructure project fund;
- Define "qualified project" as a capital outlay project that is primarily intended to develop disadvantaged community infrastructure, including a water system, a wastewater system, solid waste disposal facilities, roads or housing infrastructure, but not including general operation and maintenance, equipment, housing allowance payments or mortgage subsidies;
- Establish the composition of the governing board to include seven voting members: the secretary of DFA, the secretary of environment and the chief executive officer of NMFA (or their designees) and four members who are residents of the disadvantaged community area and experienced in capital project development or administration, appointed by legislative leadership subject to the advice and consent of the senate. In addition, the board includes five advisory, non-voting members representing the municipal league, the New Mexico council of governments, the association of counties, the executive director of MFA, and a representative of a disadvantaged community;
- Charge the board to accept, evaluate, and prioritize applications, as well as qualified projects, for financial assistance consistent with the Act's purposes;
- Require NMFA to provide staff support to the board, and process, review and evaluate applications and administer qualified projects as directed by the board;
- Create the New Mexico disadvantaged community assistance project fund (project fund), administered by NMFA, to originate grants or loans for qualified projects recommended by the board. It is funded by distributions from the public project revolving fund (PPRF),

principal and interest payments on loans for those projects, and other monies as appropriated or otherwise allocated or distributed to the fund to support qualified projects; and
- Make a $1 million distribution from the PPRF to the project fund to carry out the provisions of the Act.

The bill also re-directs an appropriation of the net proceeds of bonds payable from the PPRF from the water and wastewater planning fund to the local government planning fund. It repeals language authorizing legislative appropriation from the PPRF to the wastewater facility construction loan fund, the rural infrastructure revolving loan fund, the solid waste facility grant fund, and the water and wastewater project grant fund, and adds the project fund as a recipient of such an appropriation

Lastly, SB 39 repeals a number of sections of existing law, including one which designates DFA's Local Government Division (LGD) as the state agency responsible for administering federal Community Development Block Grant monies.

FISCAL IMPLICATIONS

OSE's Interstate Stream Commission (OSE/ISC) points out that the Act is modeled after the Colonias Infrastructure Act and reports that if the same funding procedures apply, the OSE/ISC will need to add one additional FTE to provide assistance in determining water rights compliance for the prospective projects considered for funding. The average rate for a fully burdened FTE is $85,000 per year from the General Fund.

NMFA notes that SB 39 requires a $1 million distribution from the PPRF at the end of FY 14. It also requires the NMFA to provide staff support, administer the project fund, and process and review applications for financial assistance, all of which requires many hours of NMFA staff time. Thus, the budget implications for FY 15 (the first year) are estimated by NMFA at $174 thousand, including costs for staff time to develop policies, promulgate rules and by-laws for the board, costs of eligible board members and NMFA staff travel to hearings, and other administrative costs associated with the implementation of the Act, including public hearings.

NMFA reports that FY 16 and subsequent years' budget implications estimated in the table above will depend on the number of awards in the form of grant/loan awards and include staff time to evaluate and prioritize applications received for qualified projects and, prepare committee and board recommendations, significant legal costs to close on and fund awards, as well as cots to administer each loan throughout its life and assist eligible entities develop fiscal and budget policies and processes.

NMED advises that the repeal of existing subsections (1), (2) and (3) of NMSA 1978, Section 6-21-6.1(C) will remove one of the current sources of funding for the Wastewater Facility Construction Loan Fund (WFCLF), which provide funds which are used annually to provide the twenty per cent match necessary to receive federal monies for the program, which funding averages between $5 to $8 million per year. Without the matching funds, the federal capitalization grant funds will not be available to New Mexico for the construction of needed wastewater infrastructure, unless other general fund appropriations were approved by the Legislature annually. Those repeals also remove the source of future capitalization to the Rural Infrastructure Loan Program (RIP) and the Solid Waste Facility Grant Fund (SWFGF), also administered by NMED, which program protects New Mexico's ground water.

In addition to the loss of the matching federal funds, and the loss of capital infusion into the WFCLF for projects, NMED advises it would also lose administrative funds that its Construction Programs Bureau relies on from WFCLF matching funds. Those administrative funds pay for 1.5 FTEs for loan staff and 10-15% of the technical staff time for review and oversight of the design and construction of these projects. These losses are reflected in the operating budget projections above.

Finally, MFA reports a minimum annual impact of $3.5 thousand as a result of its executive director serving on the newly created board.

SIGNIFICANT ISSUES

This bill rewrites the Community Assistance Act, which provided funding to political subdivisions for infrastructure development, to become the Disadvantaged Community Assistance Act, which funds infrastructure projects for mutual domestic water associations. As OSE/ISC comments, this bill duplicates much of the purpose and function of the Colonias Infrastructure Act (currently limited to colonias within 150 miles of the New Mexico-Mexico border) to fund, among other uses, water infrastructure projects. Five per cent of severance tax bonding capacity—approximately $20 million a year--is allocated to fund projects under the Colonias Infrastructure Act. See NMSA 1978, Section 7-27-12.5(A). In contrast, this new Act is funded in this bill by a one-time distribution from the PPRF.

Water Project Funding

SB 39 raises numerous issues relating to water project funding. OSE/ISC comments that SB 39 creates yet another program to fund water infrastructure projects with no provision for coordination with other funding sources, no vetting, and no project management. One of the main findings in the November 21, 2013 LFC review report on the Water Trust Board (WTB) was that funding of water projects in New Mexico is fragmented and lacks coordination. The report recommended creation of a centralized funding process to more effectively utilize limited resources. OSE/ISC expresses concern that adoption of SB 39 is contrary to this recommendation and further multiplies funding sources without provision for coordination and consistent implementation: there is no requirement for vetting a project or ensuring recipients have the technical, managerial, and financial capacity to complete a project and operate and maintain it in the future. NMED raises a similar concern.

In addition to NMED's concerns set out under Fiscal Implications, OSE/ISC calls attention to Section 1(C)'s removal of language authorizing legislative appropriations out of the PPRF to fund wastewater construction loans, rural infrastructure loans, and water and wastewater grants, which programs it believes work well and could meet emergency construction needs if recapitalized. Removing this funding source for these programs will limit the ability of New Mexico to meet its water needs, this agency reports.

Community Development Block Grant Funding

It also appears that SB 39, by repealing statutory language authorizing the Local Government Division of DFA to administer the federal community block grant (CDBG) funds, may put a significant source of infrastructure funding for New Mexico, totaling approximately $8 million a year, at risk. Several agencies raise issues relating to the CDBG program.

DFA reports that its Local Government Division is tasked under existing law (NMSA 1978, section 11-6-5.1) to act as a clearinghouse, provide coordination and handle applications for all state and federal grant or loan programs for local community infrastructure development. The Division administers the federal Community Development Block Grant, and is staffed with 11 FTE to administer oversight of that program and other local community infrastructure state/federal grants. It also maintains the federal reporting systems necessary to report on performance requirements.

As MFA explains:

> The HUD CDBG program is currently administered by the New Mexico Community Development Council but not addressed in SB 39. SB 39 effectively repeals the legislation which establishes the Council and replaces it with the New Mexico Disadvantaged Community Assistance Board. It light of this repeal and SB 39's failure to address the CDBG program, it is unclear which board or commission will administer CDBG funds or how those funds will be allocated. This is problematic for several reasons: 1) the CDBG program is a significant source of infrastructure funding for New Mexico, totaling approximately $8 million per year; 2) the CDBG program carries specific federal requirements and guidelines which are currently in place in regulations which identify the Council as the body responsible for allocating CDBG funding but do not appear to be contemplated by SB 39 (New Mexico could lose its CDBG funding if these requirements are not met); 3) CDBG requires public comment if any substantial changes are made to the application process (SB 39 does not contemplate any public comment processes); 4) the CDBG program has eligibility requirements that conflict with those in SB 39; and 5) MFA shares some joint reporting requirements with the CDBG program for other HUD funds that MFA receives. One is development of a five-year Consolidated Plan. If the CDBG program were transferred from DFA/LGD to NMFA, it is unclear how joint reporting requirements would be met, particularly as the five-year Consolidated Plan is currently underway with DFA/LGD.
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> Finally, by not addressing the CDBG program and due to uncertainty about which funding sources will be allocated under the proposed Act, SB 39 may alter one of the primary purposes of the existing act which is to create a single clearinghouse for state and federally funded community infrastructure. (see NMSA 1978, section 11-6-2 (C). SB39 should be clarified if it intends NMFA assume the current responsibility of DFA/LGD in serving as the clearinghouse for infrastructure funding for New Mexico, or if it merely means to bring a few infrastructure funding sources and programs under the purview of NMFA.

Similarly, OSE/ISC expresses concern that this bill does not fill the gap it creates by eliminating the statutory language governing the CDBG program.

PERFORMANCE IMPLICATIONS

As indicated in Significant Issues, MFA advises that SB 39 could have significant performance implications for the CDBG program

OSE/ISC believes it may experience difficulty meeting existing performance measures if additional demands are made to provide reviews of SB 39 projects without additional staff.

TECHNICAL ISSUES

NMFA notes that Section 9, containing the $1 million distribution from the PPRF, does not clearly specify whether the distribution is to recur each year. If so, language such as “at the end of each fiscal year, beginning in 2014” may better express such legislative intent.

Additionally, the bill does not specify who selects or how the advisory board member who is a representative of a disadvantaged community is selected.

ALTERNATIVES

Several agencies note that this bill appears to be modeled closely after the Colonias Infrastructure Act, and suggest as an alternative that that act be amended to cover disadvantaged communities. Under existing law, colonias infrastructure projects are funded by an annual set-aside equal to five per cent of severance tax bonding capacity.

AMENDMENTS

Numerous agencies suggest the bill clarify which agency is to administer the CBGF program and otherwise act as a central clearinghouse and administering and coordinating agency for state and federally funded programs for local community infrastructure development.

MFA suggests the inclusion of a more complete definition of “housing infrastructure” in Section G (4). The definitions contained in the Affordable Housing Act, NMSA 1978, section 6-27-3 may be helpful.

Due to the time and cost involved in serving in a position without voting authority, MFA recommends removal of its executive director as an advisory member of the governing board.

MD/jl