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FISCAL IMPACT REPORT

ORIGINAL DATE 02/15/20

SPONSOR Stefanics LAST UPDATED _____ HB _____

SHORT TITLE Infrastructure Funding Task Force SM 55

ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications			Nonrecurring	Various

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)
Economic Development Department (EDD)

SUMMARY

Synopsis of Bill

Senate Memorial 55 requests that DFA create a task force to study access to infrastructure funding for nongovernmental entities and nonprofit organizations who provide services to citizens in rural communities, and the impact of the anti-donation clause of the Constitution of New Mexico on such access to infrastructure funding, compromising services offered to rural communities.

The task force would:

- 1) Study how to provide infrastructure funding to these nongovernment agencies and nonprofit organizations without violating the anti-donation clause of the New Mexico constitution; and
- 2) Make recommendations for providing equitable access to infrastructure funding to those nongovernmental entities and nonprofit organizations that offer equivalent services in rural communities as normally provided by governmental or municipal entities.

The task force would be appointed by DFA and be comprised of members from EDD, the House of Representatives, the Senate, representatives of rural nonprofit organizations and any other persons with experience or knowledge that would be helpful to the task force. The task force

would issue a report on its findings and recommendations by October 1, 2020.

FISCAL IMPLICATIONS

The memorial provides no funding, but the task force could require significant staff time and resources. Additionally, DFA may need to contract with an outside attorney firm with knowledge of constitutional law and the legal implications regarding the anti-donation clause.

SIGNIFICANT ISSUES

EDD noted the memorial is requesting that the task force develop recommendations that appear to contradict the Constitution without first going to voters (or the entire Legislature) to determine if there is widespread agreement to change the anti-donation clause. It is unclear to EDD how the task force could do what is being proposed without a constitutional amendment.

Nonprofits and nongovernmental agencies provide much needed services especially in rural areas where government service reach is limited. According to the University of New Mexico Bureau of Business and Economic Research's nonprofit survey, nonprofits brought \$1.86 billion into the New Mexico economy and indirectly generated an additional \$1.36 billion in 2018. As well, the report states nonprofits are the 4th largest employer in the state, and 38 percent of nonprofits surveyed indicated demand for services would exceed their ability to meet it.

EDD further noted it joined the New Mexico Grant Makers Association in 2019 and regularly communicates with foundations through the FUNDIT group. FUNDIT is an interagency task force managed by EDD made up of 15 state and federal agencies, members of the New Mexico Grant Makers Association, and the New Mexico Foundation who collaborate on funding sources for public projects around economic development, community development, and infrastructure.

TECHNICAL ISSUES

SM55 uses the term “nongovernmental agencies” interchangeably with “nongovernmental entities”. It would be better to settle on one term to refer to this body, the NMAG noted.

OTHER SUBSTANTIVE ISSUES

The NMAG commented while there appears to be no issue with convening a task force to study access to infrastructure funding, the New Mexico Supreme Court has held that the anti-donation clause places clear prohibitions on the state's ability to donate public funds to private individuals or corporations even when such donations would facilitate a useful public purpose. See *Harrinton v. Attebury*, 1915-NMSC-058, ¶¶ 5-6. (“Within the state we have many private corporations engaged in educational work and a still greater number serve some other useful public purpose. ... If all these individuals and corporations could be given public money to aid them in carrying on the work in which they are engaged, there would practically be no limit upon the various agencies of government in the expenditure of donation of public funds, and the constitutional provision in question would be a vain, useless, absurd, and meaningless aggregation of words and sentences”).

AHO/sb