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FISCAL IMPACT REPORT

SPONSOR Muñoz **ORIGINAL DATE** 02/21/13
LAST UPDATED _____ **HB** _____

SHORT TITLE Move Drinking Water Loan Fund **SB** 419

ANALYST Canney/Kehoe/McCoy

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$340.0	\$340.0	\$340.0	\$1,020.0	Recurring	Drinking Water State Revolving Loan Administrative Fund

(Parenthesis () Indicate Expenditure Decreases)

Related to SB12, HB18 and HB364.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Energy, Minerals, and Natural Resources Department (EMNRD)
 Office of State Engineer (OSE)
 New Mexico Environment Department (NMED)
 New Mexico Finance Authority (NMFA)

SUMMARY

Synopsis of Bill

Senate Bill 419 amends the Drinking Water State Revolving Loan Fund Act (the Act) by transferring the appropriation authority and administration of the DWSRF from the New Mexico

Finance Authority (NMFA) to the New Mexico Environment Department (NMED). The bill transfers the finances of the fund from the NMFA to the state treasury. The bill removes all references to NMFA and replaces them with NMED, except for the ability to issue bonds, which is transferred from the NMFA to the Board of Finance. The effective date of the transfer is July 1, 2013, but shall be completed no later than September 30, 2013.

This bill creates two new funds, which do not require appropriations. The administrative fund will consist of deposits from fees collected from loans and federal grants, and will support the administration of the DWSRF. The drinking water bond service fund will consist of principal and interest deposits from loan repayments, to repay bond obligations, if and when bonds are issued at the request of the NMED.

FISCAL IMPLICATIONS

The funding for administration that supports the DWSRF program would be transferred from the NMFA to the NMED. This amount varies based on the amount of the federal grant. For example, as reported by the NMED, a recent federal grant for \$8.5 million would provide four percent set-aside for administration, or \$340 thousand. The NMED estimates an additional staff of two would be needed to administer the program. The NMFA currently staffs the program with three employees.

The NMFA pointed out that:

Section § 6-21A-7A(12) allows NMED to charge up to 4% in various fees to its borrowers. Currently, NMFA charges only 1.25%. These additional fees will drive up the cost of borrowing.

As proposed, SB 419 would have NMED assume NMFA's oversight and reporting of the capitalization grant, oversee the administration of an active loan fund and contract with a bonding agency to issue State Revolving Fund bonds to replenish the funds. NMFA is unable to determine how much additional staffing would be necessary for NMED to assume all of these new duties and for SBOF to issue and manage pooled bonds. It is therefore unclear whether the proposed consolidation provides any cost savings.

The proposed change to the definition of "financial assistance" to "all forms of assistance for which the fund may be used pursuant to the Safe Drinking Water Act and state law" implies that grants will be made from the fund thus negatively impacting the long-term sustainability of the revolving fund and capacity of any bonding program to be established.

Additionally, SB419 adds Section § 6-21A-4 C (8) which allows NMED to use administrative funds to pay for other program activities. This diversion of administrative funds will directly impact the NMED's ability to adequately monitor and service the loans after the capitalization grants from the EPA have ceased. Because the loan fund is required to live in perpetuity, the long-term implications of diverting these administrative fees for non-loan activities means that NMED will have to increase its fees charged to drinking water systems in need of funding to improve the quality of their drinking water in order to adequately monitor the loan portfolio, particularly if bonds have been issued.

SIGNIFICANT ISSUES

The Drinking Water State Revolving Loan Fund (DWSRF) provides low cost loans and grants to local authorities for the construction of drinking water facilities through a self-sustaining revolving loan program. The purpose of the loans and grants is to improve and protect drinking water quality and public health. The program also emphasizes providing funds to small and disadvantaged communities and to programs that encourage pollution prevention as a tool for ensuring safe drinking water

The Code of Federal Regulations (CFR) 40 Part 35 gives each state considerable flexibility to determine the design of its DWSRF program. Since the creation of the New Mexico DWSRF Act in 1997, both the NMFA and NMED were assigned dual responsibilities to administer the DWSRF Program. The NMED Construction Programs Bureau has administered the Clean Water State Revolving Fund since 1986 which complies with similar regulations required in the 40 CFR. An apparent benefit of the transfer includes the coordination and ability to move funds between the two State Revolving Fund programs, when and if desired, as provided for in federal regulations.

The OSE reported the following separation of duties and the benefits of the transfer:

Currently, the NMED determines the needs for water system improvements and compiles a list of projects from its field evaluations. It then evaluates the systems on the list for technical, managerial, and financial capacity to complete a project and produces a “fundable list” from this evaluation. The NMFA takes the fundable list and works with the communities to develop a loan agreement under the terms of the federal regulations that govern the program and services the resulting loans. The NMFA has executed a MOU with the NMED to provide technical oversight and management of the construction projects funded through the program in accordance with requirements of the Environmental Protection Agency (EPA). Some of the core tasks, such as preparation of the intended use plan and application for capitalization grants to build the loan fund are currently the responsibility of the NMED. Federal regulations require primacy to enforce the Safe Drinking Water Act to be eligible to administer the program, which is the role of the NMED. The NMED currently administers the “sister” program for wastewater projects, the Clean Water Revolving Loan program, and has an established record of making and servicing these loans for thirty years without a single default.

The NMFA’s role in the DWSRF is primarily to make the loan while the NMED provides much of the core elements of the program. Moving the loan-making portion of the program to the NMED would allow for better packaging of loans between the two programs and fully utilize the NMED’s resources for capacity development and community assistance and its technical expertise. Most other states have the water and wastewater loan programs in the same agency for efficiencies and compliance with the complicated EPA reporting and accounting requirements. Passage of this bill would allow realization of these advantages.

PERFORMANCE IMPLICATIONS

The NMFA reported that a substantial number of projects will be delayed indefinitely, as a result of a transition of duties. The NMFA reported:

Approved projects and those ready to proceed on the current priority list may be delayed indefinitely during the transition. The 20 projects totaling more than \$30 million that have been approved by NMFA since February 2012 will be delayed in closing their loans which will impact the availability of funds needed for the construction of the approved projects. This delay may impact human health and safety, as well as, job creation because the delay may impact secured contracts with construction companies which could require the water systems to re-bid the contracts. An additional eight projects totaling more than \$30.5 million in queue for project approval by the end of March 2013 will also be delayed indefinitely by the transition.

ADMINISTRATIVE IMPLICATIONS

The NMED Construction Programs Bureau, administers two revolving loan funds. These are the federally funded Clean Water State Revolving Loan Fund (CWSRF), and the state funded Rural Infrastructure Loan Fund. Both programs fund water and wastewater-related projects. The CWSRF is funded and managed very similar to the DWSRF. The NMED reports that economies of scale can be achieved by the transfer of the DWSRF to the NMED. The NMED provided the following administrative benefits:

Activities to administer the DWSRLF program can be grouped into three areas— promotion of the program to make potential borrowers aware of its benefits; technical oversight in approval and use of funding; and loan management and program administration. The NMED Construction Programs Bureau (CPB) employees already promote the Wastewater Facility Construction Loan Fund and the Rural Infrastructure Program which are revolving loan programs for wastewater or drinking water projects. The NMED anticipates that it can add the Drinking Water State Revolving Loan Fund to those promotional activities without incremental staff.

Similarly, the CPB employees are already providing technical expertise to the NMFA for drinking water construction project oversight through an agreement where the NMFA compensates the NMED for this staff time. The NMED does not anticipate that incremental technical oversight staff will be required; however, technical staff will begin charging their time to the DWSRF administrative fund created in Section 4 of SB419 which is funded by a 4% administrative set aside coming from the federal funding for the program. The NMED anticipates that if the DWSRLF program is transferred, the NMED will need two additional FTE's for loan management and program administration. Funding for these positions and for technical oversight billing would be covered by the existing federal 4% administrative set-aside provided through the federal capitalization grant provided annually by the US EPA and by additional fees similar to those already charged under the program by the NMFA.

The NMFA provided these additional administrative implications:

By replacing the words “shall” with “may” in Section § 6-21A-5, the NMED is not obligated to establish rules and procedures regarding the method of distribution of the annual federal cap grant funds; and procedures to identify affordability criteria for disadvantaged communities. This does not allow for public transparency and oversight unless the obligation is required; “may” provides discretion in activity.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB18 seeks \$2 million dollars from the public projects revolving fund to NMFA as a state match for an upcoming federal capitalization grant expected to be available from EPA. SB419 would move this appropriation to NMED along with the fund.

TECHNICAL ISSUES

Section 7(A)(12), page 20, line 18-21, provides language that the total fees collected shall not exceed four percent of the value of the loan requested or authorized. This may be problematic for two reasons. There will be a question as to which amount to use when the two are not equal. Also, the amount requested may be far more than what is authorized, based on a borrower's financial capacity to accept a loan. The intent may be not to exceed four percent of the value authorized.

The AGO pointed out that on Page 15, line 3, replace “an” with “its” so that it reads “signed by its attorney, that the local authority has or will . . .”

The NMFA added:

It is impractical to allow for a temporary provision in law to supersede the public promulgation process, amending law, and negotiating new agreements to ensure a successful transfer as proposed in Section 11 of SB419. Furthermore, it outlines that other laws with reference to the NMFA will be deemed to be a reference to the NMED.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The NMFA reported:

Not enacting this bill will mean the continued smooth operation of a successful program co-administered by NMED and NMFA.

The OSE reported:

If SB419 is not passed, the DWSRF will remain divided between the NMFA and the NMED and the resources and technical expertise at the NMED will stay less than fully utilized, to the detriment of water systems in New Mexico.

JPC/blm