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FISCAL IMPACT REPORT

ORIGINAL DATE 2/1/06

SPONSOR Tsosie LAST UPDATED 2/12/06 HB _____

SHORT TITLE Navajo Nation Capital Project Conditions SB 579/aSFC

ANALYST Kehoe/Baca

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files
Department of Indian Affairs (DIA)

SUMMARY

Synopsis of SFC Amendments

The amendments adopted by the Senate Finance Committee stipulate that, in addition to the Indian Affairs Department, other state agencies may make payments for capital outlay projects or services provided by third party contractors for goods or services supplied pursuant to the provisions of this act.

Synopsis of Original Bill

Senate Bill 579 proposes to establish certain conditions for state funding authorized for services and capital projects within the Navajo Nation.

SIGNIFICANT ISSUES

Senate Bill 579 provides provisions that would allow the State of New Mexico to directly enter into agreements with chapters of the Navajo Nation rather than the Navajo Nation government for the purposes of providing financial assistance to “indigent” residents within Indian country; specifically, for basic residential services such as electrical service, indoor plumbing, sewer, adequate potable water, telecommunications and other related infrastructure.

The bill also provides for the following: 1) allow certain nonprofit entities, if organized under tribal supervision, but not necessarily under tribal law, to also be eligible to apply for and implement capital outlay projects; 2) allow DIA to make direct payments to third-party contractors

for capital outlay projects located with Indian country; 3) allow all chapters of the Navajo Nation to pool state funds with the same or similar purpose to create a regional or centralized project upon review by DIA and approval by the State Board of Finance; 4) extend all the aforementioned provisions to the Tribal Infrastructure Act; 5) expand the definition of presumption of “indigent” to include persons who reside in Indian country and who are without basic infrastructure services; and 6) authorizes the Department of Finance and Administration to promulgate rules to implement the provisions of this bill.

Although neither a formal Attorney General’s Opinion or an Attorney General’s Advisory Opinion Letter, the Attorney General analysis by staff indicates the following based on analyses of House Bill 662, a duplicate of Senate Bill 579:

“HB 662 may violate principles of sovereignty by authorizing the state to recognize and conduct business with local chapters of the Navajo Nation, in the absence of any recognition or authorization from the Navajo Nation itself. Query: Whether the Navajo Nation should be the proper entity to delegate to its local chapters the authority to receive state capital outlay funding.

This bill, by authorizing appropriations for certain capital outlay projects to local chapters of the Navajo Nation and nonprofit entities organized under tribal supervision, may violate Article IV, sec. 31 of the New Mexico Constitution, which prohibits “appropriations for charitable, educational or other benevolent purposes to any person, corporation, association, institution or community not under the absolute control of the state . . .” (emphasis added).

This bill, by authorizing appropriations for certain capital outlay projects to nonprofit entities organized under tribal supervision, may also violate Article IX, sec. 14 of the New Mexico Constitution (the “Anti-donation Clause”), although the bill does provide a statutory presumption of indigency for certain purposes that may address a proper anti-donation clause exception

Section 7 of HB 662 creates the statutory presumption of indigency for persons residing in Indian Country who are not served by electric service, water service, indoor plumbing, sewers, telecommunications or related infrastructure “pursuant to Subsection A of Section 14 of Article 9 of the constitution of New Mexico.” This may, however, violate the Anti-donation Clause in that the constitutional provision does not make exceptions for statutory presumptions.”

OTHER SUBSTANTIVE ISSUES

State funding for authorized capital projects currently is appropriated to DIA who in turn enters into a Joint Powers Agreement with all tribal entities, including the Navajo Nation. The tribal entity then enters into third party contracts for performance of the authorized project. As stated by DIA, many of the problems due to federal, state and tribal policies, procurement procedures and layers of bureaucracy have led to the reversion of millions of dollars for funding authorized by the state for capital projects.

Senate Bill 579 would indeed streamline the procurement process by allowing state agencies to contract with either the chapters or the Navajo Nation government, by permitting the state to contract with other fiscal agents, and by permitting the state to make payments directly to third party contractors for services rendered or goods supplied relative to the projects.

If Senate Bill 579 is not enacted, perhaps a request for a study by the Department of Finance and Administration and the State Purchasing Division regarding the current procurement and payment process for capital projects would be an appropriate approach to determine how the state may assist in streamlining the contractual and payment process of capital projects with all tribal entities.

LMK/yr:nt