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FISCAL IMPACT REPORT

SPONSOR Ortiz y Pino/ Romero, A. **ORIGINAL DATE** 2/3/2020
LAST UPDATED _____ **HB** _____
SHORT TITLE Community Energy Efficiency Development Grant **SB** 114
ANALYST Leger

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|-----------|------------------------------|------------------|
| FY20 | FY21 | | |
| | \$6,000.0 | Nonrecurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY20 | FY21 | FY22 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|---------|---------|----------------------|------------------------------|------------------|
| Total | | \$150.0 | \$200.0 | \$350.0 | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

Relates to House Bill 48 and Senate Bill 153

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)
 Energy Minerals and Natural Resources Department (EMNRD)
 Indian Affairs Department (IAD)
 New Mexico Mortgage Finance Authority (MFA)
 Office of the Attorney General (AG)

SUMMARY

Synopsis of Bill

Senate Bill 114 creates the Community Energy Efficiency Development Block Grant Act (CEED), which may be used by certain qualifying entities to provide energy efficient measures to low-income households in underserved communities within the state. The bill includes required definitions and provisions for implementation in accordance with an exception to the anti-donation clause of Constitution of New Mexico. N.M. Const. art. IX, § 14(E) & (F).

The bill appropriates \$6 million from the general fund to the community energy efficiency development block grant fund for expenditure in FY21 and subsequent fiscal years for the purpose of the fund. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund. The effective date of this bill is July 1, 2020.

The bill creates a new program within EMNRD and outlines program responsibilities, project requirements, and selection criteria. The bill further identifies county, municipality or Indian nation, tribe or pueblo eligible to submit an application and requires enactment of an ordinance or resolution be an eligibility requirement.

SB114 appears on Senate Executive Message 9.

FISCAL IMPLICATIONS

The appropriation of \$6 million contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2021 and subsequent fiscal years shall not revert to the general fund.

The community energy efficiency development block grant fund is created as a nonreverting fund in the state treasury. The fund shall consist of appropriations, gifts, grants, and donations to the fund and income from investment in the fund.

Although this bill creates a new fund it states the legislature may appropriate money in the fund.

It should be noted that operational funding for CEED was not requested by EMNRD for FY21 which begins July 1, 2020. For FY21, the cost would need to be absorbed by the agency. EMNRD reports an anticipated cost of \$100 thousand for CEED operations. As the program matures, additional FTE and operational funds would be needed for effective oversight of the program such as statewide travel, program implementation, and onsite monitoring.

SIGNIFICANT ISSUES

SB114 creates a grant program to implement energy efficiency measures in low-income households. Energy efficiency is defined as measures that target efficient energy consumer behavior, equipment or devices and result in a decrease in energy consumption without reducing the amount of quality of energy services, and includes health and safety measures that use efficient equipment or devices to improve indoor air or drinking water quality for low-income persons.

No information was provided on the number of low-income households that would benefit from CEED, nor specific examples of measures to reduce energy costs. However, EMNRD did state on average, New Mexicans living below the federal poverty level pay an average of 14 percent of their income on energy expenses, and in some rural communities this can be as high as 37 percent. Rural electric coops are not required to spend funds on low-income energy efficiency improvements within their service territories, meaning New Mexicans do not receive the same level of energy efficiency improvement opportunities as those who live in the service territories of the three investor-owned utilities. Energy efficiency improvements will reduce overall electricity demand, including at peak times, meaning that utilities will need to procure less

renewable energy to meet their ETA-required goals.

Furthermore from EMNRD, energy efficiency measures will also have real economic, environmental, and personal benefits on the household level. By employing energy efficiency measures, a household can save anywhere from 5-30 percent on their utility bills. For low-income residents, these savings represent a significant increase in available funds which can then be spent in the local economy. Additionally, by decreasing the electricity demand of a residence overall, the household who lives there are insulated from rising electricity prices: savings will continue even if utilities raise their rates. SB114 would provide a wider, geographically oriented mode of bringing energy efficiency upgrades to New Mexicans who would benefit the most from them: rural residents, average-sized families, and households who need energy efficiency help which falls outside of the federal government's definition of 'weatherization'.

The Indian Affairs Department (IAD) reports tribal communities are best suited to creating solutions to reach more of their households and improve energy efficiency. For Tribes, Nations and Pueblos, the main challenge to housing is accessibility. This reality is perpetuated by underdeveloped infrastructure of tribal communities. The CEED program would complement existing federal and state energy efficiency programs and provide a broader variety of energy improvements eligible for funding.

The Department of Finance and Administration states, for the purpose of determining an "underserved community", the bill defines low income as 200 percent of the federal poverty level, and defines an underserved community as one with a median income of 200 percent or less of the federal poverty level. In 2019, 200 percent of the federal poverty level for a one person household in the state of New Mexico in 2019 was \$24,980. The project may benefit from a more specific measure with county-specific data, such as the American Communities Survey (ACS) which is used for the Community Development Block Grants.

PERFORMANCE IMPLICATIONS

Some aspects of the CEED program may be duplicative of the New Mexico EnergySmart program administered by MFA. NM EnergySmart provides assistance to low-income homeowners and renters to improve the energy efficiency of their homes, address health and safety issues and reduce utility expenses. MFA acknowledges the waitlist for the NM EnergySmart program is long and CEED may address some need and shares similar goals. MFA reports that based on income eligibility, more than 200,000 households across the state are eligible, and MFA's current wait list numbers over 2,300 households.

According to EMNRD, they are efficiently and effectively administering the U.S. Department of Energy titled Financial Resiliency through Energy Efficiency (FREE) project which provides for research on types of energy efficiency programs that are more effective community by community. Since the inception of this project in 2019, EMNRD has been working toward building a systems dynamic model of the state. Once this county level model is completed, different energy efficiency policies can be "plugged in" to see what different outcomes would be in terms of emissions, job creation, revenue streams, and other economic indicators.

ADMINISTRATIVE IMPLICATIONS

The CEED program would be administered by the Energy Conservation and Management Division of the EMNRD.

EMNRD reports they possess the technical and programmatic expertise to support and implement this program. Technical expertise within EMNRD will be critical when creating rules and evaluating applications for the CEED block grant program. By combining the modeling expertise gained through the FREE Project with the CEED block grant program, EMNRD will be able to maximize the impact (both personal impact for low income residents and environmental impact for all New Mexico residents) of the CEED block grant program.

RELATIONSHIP

Relates to HB48 “Furnace Replacement Program Funding” to appropriate \$2 million from the general fund for low-income energy efficiency by funding additional furnace replacements. The bill was endorsed by the MFA Legislative Oversight Committee.

Relates to SB153 “Low-Income Residential Energy Conservation” to appropriate \$2 million from the general fund to provide a residential energy conservation program to increase the energy efficiency and reduce energy expenditures of homes occupied by low-income persons in New Mexico.

OTHER SUBSTANTIVE ISSUES

The Office of the Attorney General points out the following:

“While SB114 purports to implement the affordable housing exception to the anti-donation clause found (Section 14, Article 9) and its required elements, it is unclear whether the constitutional provision authorizes the CEED grant in its current form. The affordable housing exception to the anti-donation clause applies to “the state, or the instrumentality of the state designated by the legislature as the state's housing authority, or a county or a municipality.” The exception is not self-executing and requires that its provisions be implemented through enabling legislation enacted by a majority of each house of the Legislature. The enabling legislation must contain specific elements, including requiring formal approval by each of the applicable entities including the State, counties and municipalities and the designated state housing authority.”

The language of the exception appears to contemplate one enabling statute. The exception references the enabling statute by stating “[t]his enabling statute,” likely indicating that only one enabling statute was intended. Shortly after the adoption of the exception, the legislature enacted the Affordable Housing Act (the Act), which is currently the sole enabling statute (NMSA 1978, § 6-27-1 through -9). The Act implements the provisions of the affordable housing exception to the anti-donation clause and includes all required elements of the enabling statute. It also designates the MFA as the state housing authority. NMSA 1978, 6-27-3(B). Multiple definitions found in the Act and corresponding rules differ from those in SB114, including the definition of “affordable housing.” Enacting parallel enabling legislation that, among other things, provides alternative definitions of affordable housing and different requirements for

eligibility and funding may create unmanageable conflicts.

On the other hand, while only one enabling statute may have been intended, the exception does not appear to limit the administration of affordable housing programs to the state housing authority. The exception permits that the state, counties, and municipalities may implement affordable housing programs with limitations only set by the enabling statute provisions. Additionally, the Act also permits the state or an instrumentality of the state to provide funding for affordable housing programs. NMSA 1978, §§ 6-27-5 and -6. In other words, the department is not precluded by either the exception nor the enabling statute from implementing affordable housing programs. This provision may provide support for the argument that SB114 is authorized by the initial enabling statute, the Affordable Housing Act, and not an enabling statute itself. However, to impart this consonant reading on the Affordable Housing Act may prevent the department from promulgating rules to implement the CEED grant program, as the enabling statute only authorizes the state housing authority to do so.”

ALTERNATIVES

DFA states, the proposed project requires a combined expertise in both energy efficiency and affordable housing. An option to consider is having the project managed by MFA instead of the Energy Conservation and Management Division. MFA has both experience with energy efficiency programs and substantial expertise in affordable housing with community partners and service providers throughout the state. In such a scenario, the Energy Conservation and Management Division could collaborate in rule-making or selection of grantees to ensure the project benefits from the energy efficiency expertise.

JLL/rl/sb