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FISCAL IMPACT REPORT

SPONSOR Gonzales/Garcia, H. **ORIGINAL DATE** 02/12/21 **LAST UPDATED** 03/17/21 **HB** _____
SHORT TITLE Rural Air Service Enhancement Act **SB** 133/aSFC/aSFI#1/aHAFC
ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$50.0	NFI	\$50.0	Nonrecurring	State Aviation

(Parenthesis () Indicate Expenditure Decreases)

Relates to an appropriation in the General Appropriation Act of 2021
 Duplicates House Bill 325

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Transportation (NMDOT)
 Economic Development Department (EDD)
 New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of HAFC Amendment

The House Appropriations and Finance Committee amendment to Senate Bill 133 (SB133) removes the \$9 million appropriation from the bill. Additionally, the amendment stipulates funds awarded through the program must be expended by a municipality or county, and that airlines receiving funds must be selected through a competitive process pursuant to the procurement code.

Synopsis of SFI#1 Amendment

The Senate floor #1 amendment to Senate Bill 133 (SB133) strikes Section 2 of the bill, the purpose statement.

Synopsis of SFC Amendment

The Senate Finance Committee amendment to Senate Bill 133 (SB133) strikes a requirement that air service be provided by “twin engine turboprop aircraft” and inserts the requirement that service be provided by aircraft with a passenger capacity of nine or less. Additionally, the amendment allows for up to 10 percent of the balance of the rural air service fund, as of July 1 of each year, to be used for infrastructure improvements associated with individual grants awarded through the air service grant enhancement program.

The SFC amendment matches the provisions of SB133 to those of House Bill 325.

Synopsis of Original Bill

Senate Bill 133 (SB133) creates a new aviation grant program within the Department of Transportation (DOT) to support air service to rural parts of the state. The program awards grants to municipal or county governments to be used to provide air service operators minimum revenue guarantees for new air service routes. To be eligible for a grant award, a municipality or county is required to have a minimum population of 20 thousand people residing within a 50-mile radius of the airport, unless there is existing air service at the airport. New air routes would have to be serviced using twin engine turboprop aircraft. The local government would have to provide either a 10 percent match if there is no existing air service or a 50 percent match if there is existing air service. The maximum grant award would be up to \$1.25 million if there is existing air service or \$1.75 million if there is no existing air service. The grant would be for a two-year period.

SB133 creates the rural air service enhancement fund and appropriates an initial \$9 million from the general fund to the enhancement fund for expenditure in fiscal year 2022 and future fiscal years. Appropriated funds will not revert to the general fund.

FISCAL IMPLICATIONS

The appropriation of \$9 million contained in the bill is a recurring expense to the general fund. Funds appropriated to the rural air service enhancement fund shall not revert.

There are 54 public use airports in the state, of which nine have commercial service. Because the number of airports that may participate and amounts of the potential grants are unknown, it is not possible to estimate the value of the grant awards per year.

SB133 may place additional costs on the state aviation division including overtime for existing staff, contracting costs, and other operational costs. DOT estimates administrative costs could be up to \$50 thousand for the first year and minimal for successive years. Administrative costs would be paid from the state aviation fund.

SIGNIFICANT ISSUES

NMDOT notes:

SB133 describes the purpose of the program is to provide assistance to airlines through a minimum revenue guarantee. Structuring the program in such a manner raises the

potential that the program could violate the Anti-Donation Clause of the New Mexico Constitution (Art. IX, section 14). With respect to the award of funds by the NMDOT to a municipality or county, a grant program which provides for a transfer of funds from a state agency to another political subdivision of the state, has been determined not to be contrary to the prohibitions of Article IX, Section 14. See *City of Gallup v. New Mexico State Park and Recreation Commission*, 1974-NMSC-084, ¶ 13, 86 N.M. 745, 527 P.2d 786; *Wiggs v. City of Albuquerque*, 1952-NMSC-013, 56 N.M. 214, 242 P.2d 865. The potential Anti-Donation concerns present themselves at the local level due to the program providing that a municipality or county would provide a private party with a revenue guarantee.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB133 as amended is nearly identical to House Bill 325.

SB133 is related to an appropriation of \$9 million in Section 9 of the General Appropriation Act of 2021.

OTHER SUBSTANTIVE ISSUES

NMDOT reports:

Section F.(3) of SB 133 does not allow use of the funds for infrastructure improvements. Consideration should be given to eliminating this restriction since infrastructure improvements at local airports could be necessary for passenger comfort and convenience as well as to install required safety and security measures required to provide the service.

The Federal Aviation Administration has established certain certification requirements for any airport that provides scheduled air carrier operations with aircraft designed for more than 9 passenger seats but less than 31 passenger seats. Any rural airport that does not currently have a 139 Certification would need to limit the size of aircraft participating in this program to less than 9 passenger seats or obtain a 139 Certification. To obtain 139 Certification, an airport must agree to certain operational and safety standards and provide for such things as firefighting and rescue equipment. Obtaining such a certification takes time and would require both an upfront expense to acquire the certification and a continuing financial obligation on the part of the municipality or county to maintain its 139 Certification.

CJ/al/sb/al/rl