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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 01/28/11  
**LAST UPDATED** 03/02/11    **HB** \_\_\_\_\_

**SPONSOR**    Keller

**SHORT TITLE**    NMFA as Community Development Finance Entity    **SB** 26

**ANALYST**    Kehoe

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
NFI	NFI	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Finance Authority (NMFA)  
 Attorney General Office (AGO)  
 Regulation & Licensing Department (RLD)  
 Economic Development Department (EDD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 26, for the New Mexico Finance Authority Oversight Committee, authorizes the New Mexico Finance Authority to seek certification to be a community development financial institution and further authorizes the Authority to determine eligibility for certain economic development funding.

### SIGNIFICANT ISSUES

Senate Bill 26 amends the Statewide Economic Development Finance Act (SWEDA) to allow The New Mexico Finance Authority (NMFA) (Authority) to establish one or more for-profit or non-profit entities, not controlled by a government entity, to participate in the federal Community Development Financial Institution Program. The bill further amends SWEDA to authorize NMFA, a quasi-governmental entity, rather than the Economic Development Department to determine eligible entities for economic development funding.

According to the United States Treasury Department website, community development financial institutions (CDFI) were established by the Riegle Community Development and Regulatory

Improvement of 1994 for the purpose of promoting economic revitalization in low-income communities, especially those communities lacking access to affordable financial products and services. To date, the federal CDFI Fund has awarded “\$1.11 billion to community development organizations and financial institutions and has awarded allocations of New Markets Tax Credits to attract private-sector investments.”

The NMFA indicates creating a CDFI provides NMFA with access to private funding for use towards the state’s goal to increase economic development, gross receipts tax generation, and increased employment. With limited state funding available, the creation of a CDFI provides an alternative source of capital for funding to businesses in rural and under-served parts of the state. The Authority indicates one of the initial CDFI targets will be toward infrastructure projects on Native American lands and indicates.

This bill is similar to the New Market Tax Credit program authorized by the Legislature in 2006. The Authority created Finance New Mexico, a subsidiary limited liability company, for the purpose of receiving and distributing New Markets Tax Credit (NMTC) funds. The program is an economic development tax incentive administered by the United States Department of the Treasury’s Community Development Financial Institutions (CDFI) fund. The purchase of NMTC by investors provides private businesses equity capital to further commercial economic development activities in rural and underserved areas of the state. The tax credit allows investors to offset their federal income tax liability equal to 39 percent of every dollar invested in a low-income community enterprise over a seven-year period.

There are currently 11 CDFI entities in New Mexico including, ACCION New Mexico, New Mexico Community Capital, New Mexico Community Development Loan (The Loan Fund), Women’s Economic Self-Sufficiency Team, Navajo Partnership for Housing, Inc., Native Community Finance, Guadalupe Credit Union, New Mexico Community Capital Fund 1P, Homewise, Inc., Santa Fe Community Housing Trust, and Everyone’s Federal Credit Union.

The Economic Development Department states, “The CDFI was created so non-profits would not have to compete with government entities for federal funding. SB 26 is providing the NMFA the ability to circumvent that policy. Additionally, a government entity would be competing with 11 other CDFI’s for federal and private money. It will create superfluous competition and will not result in additional funding from the U. S. Treasury to New Mexico.”

It should be noted both the CDFI website and the Authority indicate of the 939 certified CDFI nationally, approximately 40 percent are for-profit entities. Of New Mexico’s 11 certified CDFI, over 50 percent focus on providing access to housing and personal finance—activities not currently authorized by SWEDA. The Authority believes the creation of a new CDFI focusing on non-microloan activities, especially on tribal lands, will attract capital not currently coming to New Mexico. The Authority further states, “While parts of New Mexico are served well by several existing Community Development Financial Institutions, there still exists a need for alternative lenders through much of New Mexico. The NMFA does not wish to duplicate the efforts of the existing, highly regarded and successful CDFIs nor does it wish to engage in micro-lending activities. Initially, one of the CDFI targets will be infrastructure projects on Native American lands. NMFA anticipates creating a CDFI to help leverage program related investment loans from philanthropists into job creation and economic development within the state.”

## ADMINISTRATIVE IMPLICATIONS

Senate 26 would have limited fiscal implications to NMFA, but staffing resources could gradually increase as funding from private sources is secured. The CDFIs activities would be covered by their own operating budgets.

The Regulation and Licensing Department indicates the bill would affect their agency with the oversight of any construction projects that result from funds loaned through the program. RLD indicates the agency would be able to absorb the added duties.

## TECHNICAL ISSUES

As denoted by the Attorney General's Office: "Section 4 amends NMSA 1978, Section 6-25-27 to state that confidential information includes "that is of a business enterprise." The phrase is unclear. Does that mean technical or business information of that business? Does it mean all information related to that business?"

## OTHER SUBSTANTIVE ISSUES

It is important to note concerns expressed by the Attorney General Office (AGO) and the Regulation & Licensing Department. The AGO analysis states, "The bill may be vulnerable to legal challenge because it authorizes a quasi-governmental entity, the NM Finance Authority, to create its own private sector for-profit banking entity. According to the New York Federal Reserve Bank, "Community Development Financial Institutions or CDFIs are specialized financial institutions that promote community and economic development. They include community development banks, credit unions, loan funds, venture capital funds and microenterprise loan funds. CDFIs provide a range of products and services, that help revitalize economically distressed communities. [http://www.ny.frb.org/regional/projects\\_nys.html](http://www.ny.frb.org/regional/projects_nys.html) The bill may be vulnerable to legal challenge because it sets out this process in just seventeen lines of text."

By memorandum dated March 2, 2011, NMFA requests the following be included in the analysis in response to concerns expressed by the AGO, "Senate Bill 26 parallels legislation passed in 2006 which authorizes the NMFA to create a for-profit entity for purposes of participating in the New Markets Tax Credit program, a sister program overseen by the CDFI. As authorized by the 2006 amendment, NMFA created a for-profit entity, Finance New Mexico, LLC, which has been lending under the NMTC program. The Attorney General's Office fully reviewed the structure of Finance New Mexico, LLC, as well as several of its lending documents, and determined the structure legal."

The RLD states, "SB 26 will empower NMFA to bring much needed funding opportunities to the state. NMFA is a "governmental instrumentality," separate and apart from the state. NMSA 1978, §6-21-4. However, if NMFA forms a for-profit financial entity, SB 26 should add some restriction on the use of the profit. Perhaps restrict the profit use to further uses consistent with the Community Development Financial Institutions (CDFI) Fund program. Alternatively, strike the for-profit provision in SB 26.